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## SOCIAL RESEARCH

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## HIRAM J. HALLE—1867-1944

**H**IRAM HALLE was a great American. He stood out as a splendid example of the qualities that characterize the American at his best. He was a realist, in the sense that he dared without flinching to face facts as they are. He was an idealist who recognized that the facts are not adamant, but subject to molding by the enlightened will of man. He was a practical and eminently successful man of affairs, extraordinarily endowed with the capacity for swift and sure judgments. His chosen sphere of business was the new project capable of realization only through bold imagination and resolute will. We are all his debtors for the inventions he worked out and the inventions he brought to fruition.

He knew the value of his work in technology. And yet he never cherished the illusion that technological advance represents the key to the common good. Technology he conceived of as a most potent instrument, for good or evil. It could be turned to the good if wielded by powerful ethical and social forces. He used to say that if not another technological invention appeared in fifty years humanity could still prosper, provided society could develop sufficient intellectual and moral capacity to solve the problems of social and economic life. What profit could come from greater production, from brilliant new conquests of physical nature, if the world were destined to go through a series of wars, progressively more horrible; if, within the conditions of so-called peace, class continued to struggle blindly with class; if majorities continued to oppress and persecute minorities; if masses of willing workers had to seek work in vain and little children had to cry for bread?

Hiram Halle's heart was always open to the appeals of charity. But charity, he felt, is not enough. There will always be persons who must have recourse to the kindness of their fellows or of the enlightened state. They would be rare if we solved the social-economic problem.

What enlisted his interest in the project of a University in Exile was his vision of heightened activity in the investigation of social and economic problems through the acquisition for our country of an organic body of scholars, trained under the conditions of European life—not better scholars than our own but varying enough in preconceptions and procedures to offer a stimulus to our own thinking. His making possible the launching of the University in Exile was indeed a signal act of charity. But Hiram Halle looked beyond the immediate charitable effect to the ultimate constructive possibilities inherent in such an undertaking.

If the motif of charity had been dominant, the University in Exile might have developed the character of a little group of shell-shocked émigrés waiting for the final collapse of the Nazi terror. Through eleven years of close and intimate association with Hiram Halle the University in Exile, now the Graduate Faculty, has acquired, consciously and unconsciously, much of his brave spirit. Every member has tried to do his best, by way of contributions to our common capital of social-scientific ideas and procedures.

As a member of the Board of the New School, Hiram Halle proved a bulwark of enlightened support. No one ever saw more clearly than he that the essential condition of creative intellectual work is liberty. Men must differ widely in their views, in so vast a field of heterogeneous facts as the social sciences. No doubt many views expressed by members of the Faculty seemed of doubtful validity to Hiram Halle. Not once in the eleven years did he offer the least suggestion that the doctrines of any Faculty member should take other directions. He had positive opinions of his own, and as a brave and tolerant man, as well as a far-seeing philosopher, he respected, indeed delighted in, the positive opinions of other men, even if they were diametrically opposed to his own.

We shall not find, in our lifetime, another friend so wise, so brave, so humane, so understanding, as Hiram Halle. His loss is



irreparable. But his spirit lives with us. And we of the Graduate Faculty and the New School dedicate ourselves to carrying forward his great idea, of building up a social science that shall work effectively toward abating the strains of our social-economic system, toward releasing the energies now too widely dormant, for the creation of a better world.

We bid farewell to our friend Hiram J. Halle. We grieve; but do we well to grieve? Can any one of us wish for a better fate than to conclude a long life of good works, consistent and brave to the end?

ALVIN JOHNSON

*May 29, 1944*

# GREAT BRITAIN'S TRADE POLICY

BY RICHARD SCHÜLLER

PUBLIC opinion in Great Britain is convinced that postwar Britain will be unable to pay for her imports and that therefore, against her interest, she will be compelled to restrict them. From this belief arise proposals recommending great changes in the United Kingdom's trade policy. In February 1944 the Federation of British Industries published a report whose main contentions can be summarized in five statements.<sup>1</sup> First, it will be necessary to maintain Great Britain's exchange restrictions and import controls for a certain time after the war. Second, a system of quantitative licensing of imports is preferable to tariffs, and would facilitate the conclusion of international agreements with regard to agricultural and industrial goods. Third, the sterling bloc and other large economic units should bring about over an extended area a greater degree of economic balance and freer trading conditions. Fourth, the maximum interchange of products should be expected within the British empire. And fifth, the most-favored-nation clause should continue to apply only to questions of a non-commercial nature, such as the administration of justice, taxation and the like.

In January and February 1944 the London *Economist* published eight articles on "The Principles of Trade." They reject the idea that the world market should be parceled out by international cartels, but in all other respects the *Economist's* proposals are similar to those of the Federation of British Industries. The United Kingdom and the colonial empire would be founder members of a regional group. Australia, New Zealand, South Africa, India, Holland, Belgium, Denmark, Norway and possibly France and

<sup>1</sup> Federation of British Industries, *International Trade Policy*, Report of the F.B.I. International Trade Policy Committee (reprinted by National Trade Council, New York, N. Y.).

Portugal are expected to become members. Canada and Newfoundland would remain outside. The members would offer concessions to one another in regard to tariff rates or exchange regulations or quotas, and these concessions would not, through the most-favored-nation clause, be extended to include all other countries. The members would have to maintain exchange control and import licensing, but sterling, and currencies linked to it, could be used anywhere within the area of the group. Imports from non-members would be limited by the available amount of foreign exchange; thus imports from the United States would depend on the dollar balances of the group members.

These schemes have neither been approved nor disapproved by the British government, but they come from sources that have great influence, and therefore serious attention must be paid to them.

The authors of these plans are naturally aware that their proposals raise certain questions of principle and of existing obligations. Thus, as the *Economist* points out, the grouping plan is opposed to "the methods deemed orthodox by Mr. Cordell Hull and his school of thought," on which "American official policy, and a large and responsible section of American opinion, have set their hearts" (January 8, p. 34). The *Economist* stresses strongly the "desirability on the highest and widest grounds" of an understanding between Britain and the United States on the principles of trade: "If the formation of such a grouping were taken in America as a declaration of economic war, the results would be wholly disastrous. Indeed in such circumstances there are few countries that would wish to join" (February 5, p. 170). Also, it cannot be overlooked that in Article 7 of the Mutual Aid Agreement the United States and the United Kingdom agreed on action directed to "the elimination of all forms of discriminatory treatment in international commerce." The Federation of British Industries "has noted that no authoritative indications have been given yet as to the exact meaning of the passages dealing with international trade contained in the Atlantic Charter or in Article

7 of the Mutual Aid Agreement." But since the Federation proposes not to apply the most-favored-nation clause to commercial questions, its suggestions are obviously diametrically opposed to the Charter and the Agreement.

Such questions of principle and of existing obligations may for the moment be left aside, however, in the interest of certain technical considerations. What are the problems of British trade policy? Can they be solved by these plans? Are there better alternatives?

## I

The *Economist's* first argument is that the British balance of payments has been knocked badly out of equilibrium by the war, and that the deficit, which averaged 40 million pounds in the years 1936-38, will increase to at least 200 million, and probably to much more. Since British exports averaged 540 million in those years, the task would be "to increase that volume by half or two-thirds."

The *Economist* is right in assuming that the United Kingdom will have difficulties in balancing its accounts, but as to the figures, there is only one concrete item: the reduced income from interest on foreign investments. The principal objection to such calculations of future balances of payments is that they are based on the trade statistics of the prewar years; they assume that the prewar ratio of 930 million imports to 540 million exports would remain unaltered, if trade policy did not change, and that the absolute deficit could grow but not shrink. The history of trade, however, and the events in the period between the two wars, show many examples of sudden big changes in trade balances. It is therefore impossible to assign values to Britain's future balance. Nevertheless, it may be taken for granted that there will be a considerable gap, which British trade policy must take into account.

The currency plans drafted by Keynes and White would, according to the *Economist*, only postpone the problem for a short time (January 22, p. 95). To balance the British accounts by "borrow-

ing on the scale and for the duration which might be needed would obviously be improper for a developed country with creditor habits" (January 8, p. 34). Britain could try to reach equilibrium by depreciating the pound, but the *Economist* believes that "a devaluation of the pound might do more harm by making British imports expensive than good by making British exports attractively cheap" (January 8, p. 33). This opinion is based on the fact that food and materials have amounted to 80 percent of the British imports, and a sharp restriction of imports would mean a sharp reduction of the standard of living. In any case, tinkering with exchange rates, which provokes competitive devaluations, would be dangerous, and the *Economist's* sound conclusion is that the United Kingdom should not restrict its imports, but should considerably expand its exports.

The same conclusion is reached in the *Economist's* second argument: the concentration of public policy upon full employment. If the British government should succeed in raising the national income to the point of full employment, more than 20 percent of the increase would be spent on imports "without there being any reason for exports to rise correspondingly." But "A deficit in the international accounts is a subtraction from investment and a detraction from full employment." "What full employment requires of international trade is that a country's imports and exports should be balanced on a high level" (January 15, p. 65).

Here the *Economist* ignores the fact that the United States, Britain's most important competitor in the postwar years, and other countries as well, will also concentrate on full employment, thereby increasing their imports and opening opportunities to British exports. It is true, however, that Great Britain's full employment policy, not attended by further devaluation of the pound, is not a means of promoting a more favorable balance of payments. Consequently the *Economist* contends that the great expansion of exports which Great Britain urgently needs can be achieved only by taking account of "political realities." "The fact that, for so many of the primary commodities, Great Britain is

by far the world's largest purchaser is almost the only trump in the British hand, and it is in the highest degree unlikely that the British people could be persuaded not to play it" (January 12, p. 205). This sentence contains the essence of the whole argument, and it is certain and natural that the United Kingdom will try to make the best of its strong bargaining position. The question is whether that can be achieved by the *Economist's* regional plan.

The *Economist* strongly emphasizes the necessity to expand Britain's trade, and to expand it in such a way that the exports increase much more than the imports. The mechanism proposed for this purpose already exists in the wartime controls of exchange and trade. "It is a matter of common agreement that the existing exchange controls will have to remain in being for some years after the war" (February 5, p. 170). But the difficulty of getting rid of the controls does not at all prove that their continuation will help to expand trade and British exports. During the war foreign trade has in the main the task of supplying the needs of the United Nations. The bulk of exports is supplied under lend-lease, and all other trade is severely restricted by physical limitations on productive capacity, lack of shipping space and cutting of former sources of supply.<sup>2</sup> Thus the controls serve as an abnormal basis for a restricted trade, and there is no way of proving that they could serve as a machinery for trade expansion.

These controls were also applied, before the war, by Germany and other debtor countries in southeastern Europe and Latin America. The *Economist*, aware that in these cases the controls had sharply restrictive effects, vehemently denies any similarity with its own plan; the latter "does not mean the acceptance of all the tricks of trade distortion that were invented by Dr. Schacht and his disciples in the decade before the outbreak of the war." "Let it be said with all necessary clarity that British policy should

<sup>2</sup> U. S. Department of Commerce, Bureau of Foreign and Domestic Commerce, *Foreign Trade after the War*, by August Maffry and Hal B. Lary, Economic Series No. 28 (October 1943).

eschew Schachtian bilateralism as it would the plague" (February 5, p. 169).

Though its judgment on the German trade methods is thoroughly justified, the *Economist* is mistaken in supposing that Germany did not want to expand her foreign trade and her exports, on which her imports of food and materials for armaments depended. From 1932 to 1937 Germany's imports from countries of southeastern Europe increased from 234 to 652 million marks. And in 1938 German imports from Central and South America totaled about 330 million marks more than in 1932. But the value of Germany's total exports was 5700 million marks in 1932 and only 5300 in 1938. And 1932 was the deepest point of the depression, after which world trade recovered considerably while Germany's trade lagged behind. Taking the figures of 1930 as 100, the index of foreign trade in 1937 was 72 for Germany, 97 for the United States, and 101 for Great Britain. Even these figures understate the decline of Germany's trade, for they are based on the artificial rate of the mark and on the high prices at which Germany traded with the clearing countries.

Trying hard to increase her foreign trade, Germany paid abnormally high prices for her imports and enormous export subsidies, amounting to 1.5 billion marks in 1938. Despite these financial sacrifices trade declined, because production was concentrated on armaments and trade was entangled in a net of laws, ordinances, regulations, permits, licenses and statistics. Private business had to do a tremendous quantity of unproductive labor. The German Minister of Economics, Herr Funk, stated in one of his speeches that German administrative authorities issued 40,000 export licenses daily, and that on the average 40 forms had to be filled in for every single license. The same number of licenses and forms were required for imports. This "paper war" was scarcely conducive to an expansion of Germany's foreign trade.

Can Great Britain hope to expand her trade if she accepts the *Economist's* plan, which is based on controls of exchange and trade? British authorities would certainly endeavor to avoid all



but the absolutely necessary formalities; they would handle the controls with ability and commonsense, without undue delay; and businessmen would willingly cooperate. But we must be aware of the administrative complexities inherent in the system.

Under exchange control every payment to countries that are not members of the regional group would depend on a license issued by the controlling authority. The *Economist* proposes that "a strict accounting of dollars should be made every three months," and that trade with the United States should be regulated according to the available dollars. "The logic and the necessity of this would be so apparent that they could hardly fail to be convincing" (February 5, p. 170).<sup>3</sup>

As there would be a scarcity of dollars, there arises the difficult problem of the rate of exchange. Also, the British and every other member government would have to decide on the purposes for which the available dollars should be used—imports, freight costs, financial debts, commissions, traveling expenses and the like—and on the firms and private individuals to whom they should be allocated. British exporters would be required to deliver the proceeds of their exports, and other persons receiving dollars for their investments or services would have to do the same. In the countries that controlled exchange before the war, heavy penalties were imposed for failure to comply with this demand, but tremendous leakages occurred. In wartime, exchange control functions through, and is aided by, strict measures dictated by military necessity, measures to which the public submits under the psychological stress of the war. Thus mails and cables are subject to censorship, but such censorship, acceptable only in wartime, would have to continue after the war if exchange control were to be enforced. Finally, even if that control should function tolerably well, it would involve delays and restrictions that would be a serious obstacle to the development of trade.

<sup>3</sup> See U. S. Department of Commerce, Bureau of Foreign and Domestic Commerce, *The United States in the World Economy*, Economic Series No. 23 (Washington 1943) p. 24: "What is emphatically not possible is to have it both ways—a large volume of dollar receipts against a small volume of dollar payments."



The second device recommended by the Federation of British Industries and the *Economist* is licensing of imports or fixing of quotas. The Federation is "strongly of the opinion that a system of quantitative control of imports is generally preferable to tariffs": because of uncertainty as to the volume of imports of any given commodity, tariffs did not assist British industries to plan production over any considerable period. The *Economist* is right in believing that quotas "can be used to good or bad purpose," but it is wrong in assuming that they can be used as an instrument of a deliberately expansionist policy. Admitting that "the overwhelming majority of the quotas that were imposed in the decade before the war were restrictive and bad," it shows not much confidence in the liberality of future quotas, for it demands that the quotas allocated to the members of the regional group "should not be smaller than the average of some previous period." But if total quotas were larger than previous imports it might be that the part assigned to British goods could not be utilized, and in that case the conditions under which British exports would have to compete would be the same as when no quotas were imposed.

Quotas are restrictive not only by their nature but also by their mechanism. Government employees have to fix the quota, which is based on imports in some previous period and cannot take account of future changes in demand and supply. The revision of agreed quotas can be achieved only by negotiations between the governments, which take time and lag behind the changes in demand and supply. Also, the quota has to be allocated among the competing importing firms in the import country, and among the exporting firms in the export country. This distribution of licenses is generally based on the business done by the firms in former years, and cannot be adapted to the constant changes in business life; thus the basis of the distribution is obsolete even before it begins to work. Though some exceptional quotas are a lesser evil than prohibitive tariffs, a general quota system is bound to diminish international trade severely.

Exchange control and quotas tend to restore the balance of payments by shortening the long leg, not by lengthening the short. This restrictive tendency is reinforced by the attendant bureaucratic complexities, by the millions of licenses that have to be issued every month. In addition, a heavy burden is put on the shoulders of businessmen. Thus exchange control and licensing of imports are trade restrictions which cannot be turned into means of trade expansion.<sup>4</sup>

But the controls can be used to divert trade to certain areas. That can be achieved if these areas are granted preferential treatment in respect to exchange regulations and quotas. The *Economist* proposes that the currencies of the countries that become members of the sterling group shall be freely used in all member countries. Since special permits would be required for the use of sterling in non-member countries, trade between the members would increase, in relative terms. But there is no reason to believe that the trade between the members would be balanced by the free use of sterling. Therefore the *Economist* stipulates, as the first condition which would have to apply within the sterling area, that the accounts of each member with the other members of the grouping, taken as a whole, would have to be substantially balanced (January 5, p. 170). Quotas could be used

<sup>4</sup> The Economic Department of the League of Nations has recently published two excellent studies on this subject: *Quantitative Trade Controls* by Gottfried Haberler and Martin Hill (Princeton 1943); and *Trade Relations between Free Market and Controlled Economies* by Jacob Viner (Princeton 1943). The *Economist* says that this department of the League, now located in the United States, is "largely under the influence of American thinking," and that therefore its studies find quantitative restrictions and exchange controls "wholly bad." Actually, however, these studies are very objective, and carefully list not only the disadvantages but also the "distinct and obvious advantages" of the controls. In fact, I find that Haberler and Viner do not assign due weight to the administrative complexities and burdens of the controls, which are in practice much more injurious than their theoretical inadequacy. Moreover, Viner sees the hope for their abolition as dependent on the attainment of collective security, the reduction of high tariffs, the stabilization of currencies, the creation of facilities for international credits and the achievement of concerted action to deal with the problem of mass unemployment. It seems to me that such far-reaching requirements should be satisfactory even from the *Economist's* viewpoint. It is really not the fault of the League of Nations that an analysis of the controls shows their restrictive and arbitrary character.

as a means of promoting the establishment of such equilibrium. Thus if Great Britain imported more from the members than she exported to them, the members would have to assign a higher percentage of their import quotas to British goods. The question which of the members should grant larger quotas, and for what goods, would have to be settled by negotiations, and many differences of opinion can be expected to arise in this respect.

This scheme is one of multilateral clearing, and involves great complications. Moreover, experience teaches that clearing agreements cannot really balance the accounts of the clearing countries, and that deficits cannot be avoided, because changes in demand and supply cannot be foreseen. The *Economist* is aware of these facts, and therefore "members of the grouping would have to give an assurance that they would cooperate in removing any disequilibria that might appear by increasing their trade by some such methods as described in the fifth article of this series" (January 5, p. 170).

The fifth article discusses the proposal put forward by Herbert Feis and that made by Kalecki and Schumacher. Feis's proposal was that if any country, in any year, incurred a favorable balance of payments, it could use its credit to buy goods or services; but any credit that remained outstanding at the end of two years should be canceled. The essence of the Kalecki-Schumacher plan is that credits should be placed at the disposal of countries requiring help in reconstruction or development, and that these credits should be spent only in countries having a debit balance—which would include Great Britain. The *Economist* does not regard these plans as practical politics, because it would clearly be quite impossible to obtain American assent to them, and it is difficult to understand how the members of the sterling area could be obliged to conform with these plans in the balancing of their accounts.

Moreover, "members would have to give satisfactory assurances that they would, within their borders, avoid large-scale depressions" (January 5, p. 170). Though every country will certainly

try to avoid depressions, that is a strange kind of international obligation, and prospective members may wonder whether they can honestly give such assurances. The *Economist* obviously understands the condition as obliging the members to make an inflationary policy parallel with that of Great Britain, but the pursuance of such a policy in different countries might cause many differences of opinion.

In short, I should say that a trade policy based on exchange control and licensing of imports would tend to restrict the total trade of the countries using these devices, though it would make possible—despite many complications caused by the proposed controls—the diversion of a higher percentage of that total to the members of the group. This effect is in contradiction to the aims of the *Economist's* plan, and such a negative result is even foreshadowed in the statement: "The great danger in any system of purposive direction is lest, however good the intentions may be at the outset of working for an expansion of trade, . . . it may in fact work out to be restrictive in operation" (January 22, p. 95). I have tried to explain why this danger could not be avoided if the *Economist's* plan were to be applied in practice.

The plan is prompted by the fact that in the thirties the United Kingdom applied certain quotas and payments agreements in a more or less successful effort to promote exports and to collect debts. But on the whole British exports had to be substantially restricted in order to prevent an accumulation of trade debts, and the relative usefulness of the agreements with the controlling countries depended on their limited and exceptional application. The countries that applied a full-fledged control system ran into trouble with it, and learned that it tends to balance trade on the short leg and cannot be employed for the purpose of trade expansion. Exchange control and licensing of imports exercised as a general system of trade policy were a complete failure, and it is a preposterous idea that Britain should avail herself of such a system, which would neither promote her exports nor raise the level of employment.

## II

The British proposals, if put into operation, would provoke a conflict between the trade policies of the United States and of Great Britain, not because of Mr. Hull's "orthodoxy" but in consequence of the serious damage to American interests arising from the application of the control system in a large part of the world, and from discrimination against American trade in principle and in fact. On the other hand, public opinion in the United States must be aware that the United Kingdom has to increase the volume of its exports very considerably, and has to achieve a more favorable ratio between its exports and its imports through full utilization of Britain's bargaining power.

The *Economist* admits that Britain will start with a number of advantages. The European countries and Japan will be devastated, and the United States will be handicapped by a sharp rise in costs of production. "There is no good reason why Britain should not enjoy a head start" (January 8, p. 33). The *Economist* doubts, however, that British industry will develop the efficiency and the salesmanship necessary to utilize its advantages. "The real trouble is that too few British businessmen are trying to compete" (*ibid.*). The doctrine that Britain cannot compete on an open basis with other countries is regarded by the *Economist* as "pure defeatism." But the *Economist* itself bases its proposals on the assumption that the reason why Britain cannot balance her accounts on an open basis is that British exports have to be increased "by half or two-thirds."

The history of trade and the experience of the last two decades show that many countries have expanded their exports by more than 50 percent within a few years; this happened, for instance, during 1924-28 and again in 1933-37. And trade balances often shift widely and turn from a debit to a credit balance or the reverse. It is the fundamental mistake of such arguments as those put forward by the *Economist* that they rest on the statistics of former years and assume that the trend will continue in a straight line, which in fact never happens. Actually it is not improbable

that under postwar conditions Britain's exports will be greater and her balance more favorable than before the war.

Everybody will understand that the United Kingdom cannot "wait and see," and is obliged to use her position as the world's largest purchaser to achieve, as efficiently as possible, the development of her foreign trade. Her strong bargaining power will make it easy for her to obtain considerable concessions in normal trade agreements from all countries to which the British market is important. The *Economist* pays no attention at all to this method, which is the "orthodox" but powerful means that countries usually employ in order to utilize their purchasing power and to expand their trade.

Great Britain's commercial treaties are still far from turning her bargaining possibilities to full account. Before 1931 the United Kingdom could not negotiate tariff agreements because it had no protective tariff. After it reversed its free trade policy and adopted a tariff it began to bargain, but in the thirties the crisis and its effects on international trade made such negotiations difficult; the scope of the agreements was limited, as in many countries trade was restricted more by exchange controls and quotas than by tariffs. In these circumstances Great Britain could not make the most of her bargaining power. After the war, however, the countries that need access to the British market for their exports, and have an active trade balance with Great Britain, will be obliged to grant considerable concessions to her exports, and the area where such advantages can be obtained is much larger than the proposed regional area.

To be sure, the concessions that the United Kingdom receives in normal agreements are automatically extended to all other countries enjoying most-favored-nation treatment, while the Federation of British Industries and the *Economist* insist on the necessity of creating a region within which British exports could move more freely than those of competitors. But such an area, and a very large one, exists in the dominions, colonies and possessions of the British empire, representing about 30 percent of the world's



trade. For many years far-reaching preferences have been accorded to British exports within the empire, and the Ottawa agreements, concluded in 1932, placed the economic integration of the empire on a permanent basis which the British government does not intend to abandon. Prime Minister Winston Churchill declared that it was he who asked for the insertion of the words "with due respect for their existing obligations" in the fourth principle of the Atlantic Charter, and these words were expressly intended to retain for Britain the "fullest possible rights and liberties over the question of imperial preference." That preference was recognized as a legitimate exception from the most-favored-nation clause, and it is a precise, clear-cut exception which causes no arbitrary decisions and conflicts. Secretary of State Cordell Hull has expressly declared that imperial preference would not hinder economic cooperation of England and other United Nations.

The system of imperial preference is highly superior to the complexities of the control system, and it is effective. From 1929 to 1938 imports within the empire increased from 30 to 42 percent, exports from 44 to 50 percent, of the total trade of the empire. Moreover, Canada participates in the Ottawa agreements, while, according to the *Economist* proposals, she would remain outside the regional control group. Thus the United Kingdom would make a bad bargain if she replaced imperial preference by control of exchange and trade; she would thereby provoke strong opposition and could not gain greater advantages. The protection which the countries of the empire maintain against British competition results only from the necessity to protect their young industries, and these industries' claims would not be eliminated or diminished by the adoption of a policy based on exchange control and import licenses.

As has been mentioned, the proposals of the Federation of British Industries and the *Economist* would include countries outside the empire. Countries of the sterling group are expected to be included, and the *Economist* believes that France and Portugal, with their overseas dependencies, might be ready to

join the group. I should say that French mentality, tradition and interests are not likely to prompt France's adherence. But some of the so-called Oslo countries might indeed be inclined to establish closer economic relations with the United Kingdom.

In 1930 and 1931 the Scandinavian and the Baltic countries and Holland and Belgium concluded the Oslo convention, providing that the contracting parties would not raise the existing duties without consulting among themselves. The Oslo powers hoped that Great Britain would maintain her free trade policy and support the "tariff truce." When Britain adopted a protective tariff and devalued the pound the Scandinavian countries aligned their currencies with sterling and made concessions to British exports, in particular to coal and textiles. In 1932 Holland and Belgium concluded the Ouchy convention, stipulating that they would not raise their tariffs against third countries and would reduce by 10 percent annually the customs duties between Holland and Belgium. This convention was not ratified, because the United Kingdom refused to make the requisite adjustment of its most-favored-nation treaties with Holland and Belgium.

This situation would be different if Britain now entered the combination. The Baltic countries and Finland are for obvious reasons not mentioned in the *Economist's* proposals, and Sweden can be expected to continue her independent protectionist policy. But Denmark, Norway, Holland and Belgium would probably join a combination supported by the United Kingdom; they have persistently attempted to form a freer trade group, and trade with Great Britain is of overwhelming importance to them. Britain's chief competitor in this area is Germany; Poland has competed only in the export of coal. And it will be some time before these ruined competitors recover their strength.

The members of the sterling group could agree not to raise their tariffs without consultation, to abolish exchange and trade controls as soon and as far as possible, and to link their currencies, thus expanding their trade and promoting British exports. But they could go further in this direction and, applying the ideas



of the Ouchy convention, might even contemplate the establishment of reciprocal free trade without concluding a customs union. Such a scheme would seem to have a fair chance, because these countries depend heavily on foreign trade and need little protection in general and hardly any protection against one another. Even in the crisis after 1931 they followed a moderate tariff policy.

Reciprocal free trade would mean that Britain, Denmark, Norway, Holland and Belgium would pledge themselves to admit duty-free the goods produced in the participating countries. Under such a system every partner would have his own tariff, and would independently conclude trade agreements with countries not belonging to the group. Therefore the political difficulties inherent in a customs union would be eliminated. No common parliament would have to be elected to vote the tariff, no common foreign office need be set up to conclude trade agreements. There would be no machinery dominated by Great Britain, and the smaller countries would have no reason to fear that their political independence was imperiled by the arrangement.

Would reciprocal free trade be compatible with the most-favored-nation clause? A customs union is recognized as an exception to the clause, but reciprocal free trade has not yet been discussed because it has nowhere been established. In the free trade period there was no reason to initiate such a plan, and during half a century of growing protectionism no country considered a scheme of regional free trade. The scheme is reciprocal; it could not be entered into by a country that did not grant free trade, and I do not believe that any government would claim unilateral free trade. If objections were made, the text of the most-favored-nation clause could be modified in order to make it clear that reciprocal free trade is not subjected to its provisions.

The plan raises the technical problem of indirect imports: for example, if the Danish duty on a certain commodity were lower than the British duty, a third country might send the commodity first to Denmark, whence it could be shipped duty-free to Britain. But the commodity could pass duty-free only with a false certifi-

cate of origin, and this danger would not be serious. The British consulates would certainly take care to scrutinize the certificates. Goods not produced in Denmark at all could not pass into the United Kingdom with a Danish certificate, and the import and export of foreign goods similar to those produced in Denmark would be watched by the Danish authorities, bent on preventing foreign competitors from abusing the rights reserved to Danish products.

Great Britain has to protect certain interests of her agriculture and to take account of the interests of the empire. Therefore she can be expected to maintain the quota on bacon—which is important to her producers and of which 68 percent was allocated to Denmark before the war—and the butter quota, in order to divide her imports between New Zealand and Denmark. In return, the sterling countries would probably wish to protect some industries. Denmark's economy, for instance, is based on livestock farming and the export of its products. Danish industries export Diesel engines and ships, cement, high-class china and pottery, but they supply only a small part of the Danish consumption in textiles and they may try to reserve that small part for home production. Thus some economic problems would have to be examined. Their number, however, would not be large, and their solution could not be too difficult at a time when the members of the group were having to reconstruct their war-battered economies. In any case, free trade within the European sterling group would be the rule, and restrictions would be only exceptions, while under exchange control and import licenses restrictions would be the rule and freer trade the exception.

Great Britain can promote her trade balance, her exports and her employment by abolishing the clumsy, bureaucratic and arbitrary controls and licenses as quickly as possible, and by combining universal and regional methods of freer trade policy, in line with the principle of cooperation of the United Nations, with measures that would expand international trade rather than restricting it.

# THE UNITED STATES IN THE FUTURE WORLD ECONOMY

BY FRITZ STERNBERG

THE production and productive capacity of the United States have made almost incredible strides in the course of World War II, and one of the most important tasks after the end of the war will be to find peacetime markets for this tremendous increase. The problem is exceedingly complex. In the present article the primary emphasis is on only one of its aspects: the changes that American production has undergone within the framework of world production, and the consequences that may be expected in this country's economic relations with the rest of the world.

## I

In the decades that preceded the first world war, world production showed all indications of a tremendous upsurge, rising by nearly 70 percent from the turn of the century until the beginning of that war.<sup>1</sup> It is true that this general secular expansion, which encompassed more and more countries, was interrupted by crises and depressions. But by and large the decline in production in times of crisis hardly ever lasted more than two years. And the lowest point of the depression always lay above the boom point before the preceding depression.

The development differed, however, in the various countries, and therefore industrial leadership continually shifted during that period, as is evident from Table 1. England, which was at first in the lead in world industrial production, was outproduced as early as 1880 by the United States, and, after the turn of the century, by Germany. After the 1880's the United States not only

<sup>1</sup> Institut für Konjunkturforschung, "Die Industriewirtschaft: Entwicklungstendenzen der deutschen und internationalen Industrieproduktion, 1860 bis 1932" (Berlin 1933; Sonderheft 31 of *Vierteljahrshefte zur Konjunkturforschung*) p. 18.

TABLE 1. ORDER OF PRECEDENCE OF LEADING COUNTRIES IN WORLD INDUSTRIAL PRODUCTION, 1860-1900 \*

<i>Around 1860</i>	<i>Around 1870</i>	<i>Around 1880</i>	<i>Around 1890</i>	<i>Around 1900</i>
Gt. Brit.	Gt. Brit.	U. S. A.	U. S. A.	U. S. A.
France	U. S. A.	Gt. Brit.	Gt. Brit.	Germany
U. S. A.	France	Germany	Germany	Gt. Brit.
Germany	Germany	France	France	France

\* From "Die Industriegewirtschaft . . ." (see footnote 1, above) p. 19.

had the lead, but she steadily increased the margin between herself and the other industrial powers. By the time of World War I she accounted for more than one-third—about 35 percent<sup>2</sup>—of world production, and the trend of development clearly pointed to a decline in Europe's participation. This trend was accelerated by the war. In 1913 Europe accounted for 53 percent of world industrial output, in 1919-20, for 41 percent. Even after the war damages were repaired, Europe never again reached the point where it turned out even half of the world's production.

In 1928, the last boom year before the world crisis, the volume of American production exceeded the total production of Europe. The major powers remained in the same order of precedence, but, as Table 2 indicates, the United States accounted for 45 percent of world production, while Germany's participation was less than 12 percent, Great Britain's about 9 percent, and France's 7 percent. Thus in 1928 the United States produced over 60 percent more goods than the three next largest industrial nations combined.<sup>3</sup>

But the depression of the early thirties sharply disrupted the trend. For one thing, American production at that time declined

<sup>2</sup> *Ibid.*, p. 19.

<sup>3</sup> *Ibid.*, p. 38. The above estimate of the United States' participation in world production is corroborated by American figures. See U. S. Department of Commerce, Bureau of Foreign and Domestic Commerce, *Foreign Trade after the War*, by August Maffry and Hal B. Lary, Economic Series No. 28 (October 1943): "Measured in dollar values, it accounted for almost half the world's industrial output" (p. 3).

TABLE 2. PARTICIPATION OF IMPORTANT COUNTRIES IN WORLD PRODUCTION, 1928-32<sup>a</sup>

Country	1928	1930	1931	mid-1932
U. S. A.	44.8%	40.6%	37.6%	34.4%
U. S. S. R.	4.7	7.6	11.2	13.1
Great Britain	9.3	9.4	9.5	11.3
Germany	11.6	10.8	9.6	8.9
France	7.0	8.0	7.9	7.5
Japan	2.4	2.6	2.8	4.0
British India	1.3	1.7	1.8	2.1

<sup>a</sup> From "Die Industriewirtschaft . . ." (see footnote 1, above) p. 42.

much more than that of England and France. In addition, the depression caused only a temporary dent in Japanese production, which in 1932 had already surpassed the figures of 1929. Above all, Soviet Russia's industrial development remained completely unaffected by the world depression; during the first Five-Year Plan, which was carried out at that time, Russia tremendously stepped up her output, and by 1931 she had attained second place in the industrial production of the world. All this resulted in a sharp reduction of the proportion accounted for by the United States. In the last years before the outbreak of the present war she far surpassed her production figures of the depression, but did not recover her pre-depression share of world output.

Table 3 shows production indices, based on 1929, for the two years before the outbreak of World War II. It is evident that in 1937 the entire world production was nearly 20 percent, in 1938

TABLE 3. INDICES OF MINING AND MANUFACTURING PRODUCTION, 1937 and 1938<sup>a</sup>

Year	World, including U.S.S.R.	World, excluding U.S.S.R.	Europe, excluding U.S.S.R.	U.S.A.
1929	100.0	100.0	100.0	100.0
1937	119.4	103.7	111.2	92.2
1938	111.5	93.0	109.5	72.3

<sup>a</sup> From League of Nations, *Statistical Year Book, 1938-1939* (Geneva 1939) p. 180.

nearly 12 percent higher than in 1929, while the production of the United States was in those two years, respectively, 8 and 28 percent below the earlier figure. The table shows also that the Soviet Union had a decisive share in the rise of world production; if her contribution is subtracted, world industrial production in 1938 was below the level of 1929, and in 1937 less than 4 percent higher.

The decline in the United States' share in the production of the world during this decade did not at all mean, however, a decline in her productive capacity in comparison with that of the rest of the world. Indeed, her productive capacity increased during this period, as a result of the growth of production per manhour as well as of the increase in manpower itself. But the United States could not utilize her productive capacity in this period. It was precisely this unexploited productive capacity of the American economy which in the present war made possible an increase in American production far beyond that of World War I, thereby continuing the trend of the last fifty years toward an increasing American participation in world production.

In 1939 the production of 1929 was approximately reached again: according to the Federal Reserve Index of Industrial Production (1935-39=100) American output in 1929 was 110, and in 1939 was 108. Since then it has far exceeded the production figures of 1929. In 1940 the Federal Reserve index was around 123, or more than 10 percent higher than in 1929; the gross national output in 1940 prices amounted to 97 billion dollars. Since 1940 American production has grown by no less than 50 percent.

According to a study of the Department of Commerce,<sup>4</sup> about two-thirds of this tremendous increase is due to a rise in output per manhour, the remaining third to an expansion of the labor force. Since this increase in manpower occurred at a time when

<sup>4</sup> U. S. Department of Commerce, Bureau of Foreign and Domestic Commerce, *Markets after the War, An Approach to their Analysis*, Senate Document No. 40, 78th Congress, 1st Session (Washington 1943).



more than 10 million men were being diverted to the armed forces it may be assumed that the increase in the labor force will be maintained after the war, even though a large number of women, youth and old people will no longer seek employment at that time. This means that if the United States utilizes her productive capacity to the utmost, she can produce, after the war, about 60 per cent more than in 1929, the year of prosperity before the outbreak of the world crisis.

A 60 percent rise in American production would strongly boost this country's participation in world production even if the war wrought no destruction in Europe's industrial capacity. But we know that the war has caused terrific devastation, and may cause far more before it is ended. Therefore it is safe to say that if the productive capacity of the United States is fully utilized her participation in world production will rise far beyond the level that it attained in the boom years preceding the last depression.

Where can markets be found for this tremendously increased production, large even for American concepts? The fact that not even the prewar productive capacity of this country was fully exploited is indicative of the immense difficulties to be overcome if not only that capacity is to be used, but also that which has since been created.

"It seems almost certain," declares the Department of Commerce,<sup>5</sup> "that the post-war output must exceed the best pre-war year. If it should be no more than in 1940 there would be the 9 million who were unemployed in 1940 plus the 2½ million added to the civilian labor force between 1940 and 1946 plus 8 million who would be replaced by improvements in efficiency over the 6 years—a total of over 19 million unemployed. Even with an average work-week 5 hours shorter than in 1940 there would be more unemployed than the 13 million in 1932." These figures show clearly how tremendously markets must be expanded if they are to keep pace with the expanded American productive capacity.

<sup>5</sup> *Ibid.*, p. 3.

## II

This article does not attempt to examine the possibilities for expansion of the American home market. The question we are here concerned with is merely whether the United States' conomic relations with the rest of the world can be so much expanded that they will play a decisive role in the opening up of outlets for increased production.

How was it before? First it should be remembered that the participation of the United States in world trade was considerably smaller than her participation in world production. This is evident from Table 4, which presents the figures for 1929, the year of prosperity before the world crisis set in. In that year the United States took first place in exports, second place, after England, in imports, but her proportion of total world trade was only 14 percent, while her participation in world production was about 45 percent. Her proportion of world trade was small not only in comparison with England—the classic example of a country dependent on foreign commerce, who participated to a greater extent in world trade than in world production—but also in comparison with countries like Germany and France.

In the past the American economy was decisively determined by its home market, with foreign trade playing a purely secondary role. This situation became especially clear during the period between the depression and the war.<sup>6</sup> What importance is American foreign trade likely to have in the future? The Department of Commerce has made an interesting study of this subject,<sup>7</sup> based on the assumption that productive capacity will be fully exploited after the war. On this premise the study makes estimates for the year 1948, when it is believed that the immediate war damages in Europe and Russia will have been repaired. It is emphasized that in the final analysis it is the extent of American import needs that determines American exports.

<sup>6</sup> During 1933-38 the United States furnished only about 13 percent of the total imports of foreign countries, as compared with approximately 17 percent in 1929: see *Foreign Trade after the War* (cited above) p. 4.

<sup>7</sup> *Foreign Trade after the War* (cited above).



TABLE 4. PARTICIPATION OF IMPORTANT COUNTRIES IN WORLD TRADE, 1929 <sup>a</sup>

Country	Imports	Exports	Total
United Kingdom	15.19%	10.75%	13.05%
U. S. A.	12.19	15.62	13.84
Germany	9.00	9.73	9.35
France	6.41	5.95	6.19
Japan	2.80	2.94	2.86
U. S. S. R.	1.27	1.44	1.35

<sup>a</sup> From League of Nations, *Review of World Trade* (Geneva 1938) p. 25.

"Let us first," says this study, "examine the factors determining the supply of dollars available to foreign countries for buying American goods and for other purposes. This is merely a practical application of the simple, but sometimes forgotten truth that trade is a two-way affair, and that, if a country wishes to sell, it must also be willing to buy. . . . It is only as dollars are supplied in one way or another to the rest of the world that American goods can find markets abroad" (p. 2). "Throughout the interwar period from 1919 to 1939, the physical volume of imports followed a path closely parallel to the index of industrial production. . . . Purely as a projection of the relationship between the gross national product and the value of imports over the 1929-39 period . . . an output of 175 billion dollars in 1948 would probably mean an import total of slightly more than 7 billion dollars" (p. 7). The other items in the American balance of payments are estimated at about 3 billion dollars, and thus it is declared that "Based solely on the average distribution over the interwar period as a whole, United States exports might be expected to total around 7 billion dollars in 1948 out of a total supply of dollars amounting to 10.3 billion" (p. 15).

In brief, then, the Department of Commerce study assumes, taking into account a thousand changes of detail, that the traditional relationship between American production and American foreign trade will be preserved in the future, and that the home market will continue to determine clearly the extent of foreign

trade. If production lies 50 percent above its level in former boom years, then imports will be correspondingly higher, and in their wake exports will be higher too. If in 1948 the United States is in a position to exploit completely the capacity she has today and will have then, her exports may be expected to reach 7 billion dollars. In that event the United States will remain the industrial country whose foreign trade constitutes the smallest proportion of production, and one consequence is absolutely clear: in the future, too, the home market will be decisive for the nation's economic structure. Foreign trade, and all economic relations with the rest of the world, will be of only secondary importance.

### III

For a number of reasons it is doubtful whether such a conservative treatment of foreign trade relations is the only solution left to the United States in the postwar world. No one can doubt, however, that a more rapid and more intensive development of American exports would be of the utmost importance for the economic stability of this country, as well as for the long-term welfare of large regions abroad.

So far as the American economy itself is concerned, important sections of industry, especially in the sphere of producer goods, have been expanded far beyond the peacetime capacity of the home market and of normal exports. It hardly need be stressed what a large-scale contraction of these industries after the war would mean in terms of private losses and social costs. The domestic situation will be aggravated by the steep upsurge of savings which everybody expects in the postwar period if a policy of full employment is successfully pursued. According to past experience, an increase of national output and income by 50 percent over the prewar period may entail a 50 percent increase in savings for which new investments will have to be found.

Thus the world market may well assume a completely new function for the American economy: the function of absorbing during the next decade increasing amounts of the domestic sur-

plus of savings. Or, to put it differently, capital exports, of a dimension that exceeds all past experience, may become a basic condition for the establishment of full employment at home, at least if the framework of free enterprise is to be maintained.

It is obvious that such American capital exports would be in accordance with the economic interest of the underdeveloped regions, and therefore with any policy aiming at an intensification of international exchange. The huge gap between the standard of living of the United States and that of two-thirds of the world's population is the strongest obstacle to a rapid increase in the volume of American exports. Only by raising the import capacity of other nations, especially of the Asiatic and Latin American countries, can the general level of world trade be restored to and expanded beyond its peak reached in 1929.

There is common agreement that such a rise of the standard of living in the "backward" regions is conditional upon large-scale industrialization. Little knowledge exists, however, about the actual forms that the process of industrialization has taken in the past, or about the typical repercussions it has had on the size and composition of international trade. Only a few general observations on this huge topic can be made in the present context, but they may suffice at least to point out the dimensions of the problem, and some of its implications for American trade and investment policy after the war.

In regard to both Europe and the United States it is noteworthy how slowly the entire industrialization process proceeded in the nineteenth and the beginning of the twentieth century. At first the consumption industries had primacy; capital goods industries developed only in the second phase. The first industries to spring up were the textile industries, and those concerned with food processing followed. It was only gradually that the capital goods industries—iron, steel and machine plants, chemical factories—made an important contribution to total production, but finally they came abreast of the consumption goods industries, or, as in the United States, surpassed them.

The process varied in different countries. In England, for example, the consumption goods industries produced 4 or 5 times as much as the capital goods industries in the middle of the nineteenth century, and it took about 75 years, until 1924, for the ratio to reach 1.5 to 1.<sup>8</sup> In Germany, where the industrialization process began later than in England, it developed rather more quickly. In 1895 the ratio of consumption goods industries to capital goods industries was already 2.3 to 1, and 30 years later, in 1925, the two were contributing almost equally to overall production. In Japan industrialization began still later and developed faster; there the ratio of consumption goods industries to capital goods industries was 4.8 to 1 around 1900, and by 1925 it had reached 2.4 to 1. But despite the differences in tempo, in all the industrial countries the consumption goods industries developed before capital goods industries were created on a major scale, and it was generations before the latter caught up with the former.

If industrialization throughout the world proceeds as slowly after this war as it did in the past, the quantitative influence on American exports will hardly be important in the next few decades. But even in the period between the two world wars there were industrialization developments that were fundamentally different in tempo and form from those of the nineteenth and early twentieth centuries. One such development was that of Russia; another was that of Manchuria.

Table 5 compares Russia's production before the outbreak of World War I with her output between 1928, the beginning of the Five-Year Plans, and 1940, the last year she enjoyed peace. The figures show that in the course of the first Five-Year Plan her production more than doubled; between 1932 and 1940 it

<sup>8</sup> The ratios in this paragraph are from Walter Hoffmann, *Stadien und Typen der Industrialisierung* (Kiel 1931). The figures are not absolutely accurate, of course, and Hoffmann states explicitly in various places that they are only estimates. For present purposes, however, the exact proportion is less important than the trend of development toward an increasing share of capital goods industries, and the period of time necessary to attain it.

TABLE 5. RUSSIAN INDUSTRIAL PRODUCTION, 1913-40.<sup>a</sup>

Year	Producer Goods		Consumer Goods		Total Industrial Production
	billions of rubles	% of total production	billions of rubles	% of total production	
1913	5.4	33.3%	10.8	66.7%	16.2
1928	6.0	32.8	12.3	67.2	18.3
1932	23.1	53.3	20.2	46.7	43.3
1937	55.2	57.8	40.3	42.2	95.5
1940	83.9	61.0	53.6	39.0	137.5

<sup>a</sup> From A. Yugow, *Russia's Economic Front for War and Peace* (New York 1942) p. 14. Ruble figures are as of 1926-27 price level.

more than trebled. The tempo was so rapid that by the beginning of World War II the Soviet Union had surpassed all other countries in the growth of her industrial apparatus; in absolute figures she was the third largest industrial nation in the world. Within the framework of this tremendous overall growth in production, the producer goods industries expanded at a particularly rapid rate. In 1928 they were still, as they had been in 1913, accounting for only one-third of total production, but by 1940, only twelve years later, their contribution was not very far from two-thirds of the total. Military considerations were, of course, an important reason for the decisive emphasis that the Russian Five-Year Plans placed on the development of heavy industries.

The huge expansion of Russian industry was financed chiefly by domestic investments. Before World War I long-term investments in Russia amounted to 6.1 percent of the national income, but during the Five-Year Plans the proportion rose to 22.6 and then to 26.4 percent;<sup>9</sup> thus it was much higher than the investment ratio of czarist Russia, but also much higher than the ratio prevailing in European industrial countries and in the United States.

In view of the fact that a high degree of industrialization is to be expected after the present war in Asiatic countries, where

<sup>9</sup> A. Yugow, *Russia's Economic Front for War and Peace* (New York 1942) p. 33.

the agricultural population still represents the overwhelming majority, there is another aspect of the development of Russian heavy industry that is significant. In Europe producer goods industries did not reach the scope of consumer goods industries until the proportion of the population engaged in agricultural work had fallen below half. It is true that in Russia the agricultural population declined sharply between 1913 and 1939; but according to the census of January 17, 1939, when producer goods industries were already accounting for the major part of production, the rural population (114.6 million) was still more than twice as large as the urban population (55.9 million).

A number of special factors made possible the tremendous scope and tempo of Russia's development. The state managed the entire production according to plan, limiting consumption and thus the output of the consumer goods industries. In addition, Russia is one of the most favored countries in the world as far as raw materials are concerned. She has sufficient iron, coal, oil, cotton. Like the United States, she can feed her population off her own soil, and at the same time place nearly all needed raw materials at the disposal of her industry.

The development was further facilitated by the fact that Russia, entering late into the process of industrialization, was able to skip some of the intermediate phases and thus to step up the tempo. Many industries were founded on a large scale from the outset, while in the old industrial nations the same industries still had many small and medium-size plants. It is noteworthy that, in relation to the total number of workers, no industrial country in the world equals the Soviet Union in its number of plants with more than a thousand workers. Furthermore, even before the beginning of the Five-Year Plans, Russia had a far-flung rail network and possessed a considerable coal, iron and steel industry. Thus she had workers' cadres at her disposal which could be used to train the many additional millions of workers demanded by the expansion of industry.

Few of the factors that influenced the Russian development



exist in the industrially retarded countries. Therefore in their industrialization after the war it will be of basic importance whether the development is financed out of the savings of the people themselves or is facilitated by American capital.

The decisive extent to which foreign capital influences the industrialization of a country is shown by the development of Manchuria after the Japanese conquest. In Manchuria the Japanese pursued a different policy from the one they had previously followed in Korea and Formosa. In those two countries, as in many colonial countries controlled by European nations, it was mainly the raw material industries that were developed, and these primarily for the processing of agricultural products. In Manchuria, on the other hand, the Japanese tried to expand all industries, chiefly the heavy industries, in order to have an industrial basis from which to supply their armies on the Asiatic continent.

Before they entered their war with China they made large-scale investments in Manchuria. By the end of 1939 they had invested there more than 3 billion yen, a sum that exceeded Japan's average annual exports in the years 1936-38 (her exports in 1936 were 2.7 billion yen, in 1937, 3.2, in 1938, 2.7, with the proportion going to the yen bloc countries rising from about one-fourth in the first two years of this period to 43 percent in 1938).<sup>10</sup> Her investments would probably have been even higher were it not for the fact that Japan herself is poor in capital.

Thus Manchuria's industrial expansion took place on a large scale in a relatively short period, from 1932 to 1936, in some fields to 1939. During this time the total railway mileage was increased from 4,000 to 10,000 kilometers. Coal production grew from 7.1 million tons in 1932 to 13.6 million in 1936 and around 15 million in 1938. Pig iron production rose from 368,000 tons in 1932 to 633,000 in 1936 and approximately a million in 1939. Largely as a result of this industrial upsurge, Manchuria's imports from the yen bloc countries increased greatly: in billions of yen

<sup>10</sup> These and the following data on Manchuria are from Kate L. Mitchell, *Japan's Industrial Strength* (New York 1942) pp. 87 ff.

the figures for 1936-39 are 0.6, 0.7, 1.1, 1.6, a rise that meant nearly a trebling of imports within a period of four years.<sup>11</sup> It should be noted that in Manchuria, as in the Soviet Union, the heavy industries surpassed the consumption goods industries at a time when the agricultural population was still overwhelmingly in the majority.

The industrial development plan drawn up in 1936 for the years 1937-41 shows how the Japanese planned to organize the further industrial development of Manchuria. During that period 2.5 billion yen were to be newly invested. By 1941 production was to reach, in millions of tons, 27 of coal, 2.3 of steel, 2.4 of pig iron, 6.6 of iron ore. At the same time the generation of electricity was to be stepped up from 0.42 to 1.20 million kilowatts. Because of the outbreak of the Sino-Japanese war only a small part of this plan was carried out, but the increase that had already been attained was enough to indicate how much industrialization can be stepped up in a relatively brief period of time.

The industrialization of Manchuria shows what can be done in China and throughout Asia. China is inhabited by more than one-fifth of the world's population, but in 1929, before the war with Japan, she accounted for only about 2 percent of the world's trade. China proper has a population ten times as great as Manchuria's 39.5 million,<sup>12</sup> and thus any industrialization process in China alone, similar in scope to that in Manchuria before the beginning of the Sino-Japanese war, would have to reckon with dimensions many times those confronted in Manchuria.

#### IV

After the present war industrialization need proceed neither along the Russian lines—that is, without foreign capital imports—nor along the pattern followed in Manchuria, where Japan's capital export policy was determined primarily by military, imperialistic

<sup>11</sup> *Ibid.*, p. 125, quoted from the *Oriental Economist Supplement* (March 1941).

<sup>12</sup> Karl J. Pelzer, *Population and Land Utilization*, Institute of Pacific Relations (New York 1941; Part I of *Economic Survey of the Pacific Area*) p. 23.



and war economic considerations. A third possibility is that the United States, for no other reason than that of market expansion, participate on a large scale in the economic conversion of the countries that are still industrially retarded. This course might necessitate, however, decisive changes in American capital exports, changes both in volume and in form.

The United States became a creditor nation for the first time between the two world wars. During the period 1919-30 American capital exports totaled 11.6 billion dollars, an annual average of about 965 million. In the years that preceded the 1929 crisis the United States' export of capital was sometimes larger than the capital exports of the entire rest of the world. Nevertheless, capital was exported also by England, France, the Netherlands, Sweden, Switzerland. After the present war that situation will have changed considerably. Even England will probably not have an active balance of payments, though it is not absolutely impossible that the British empire will be able to assume an active role on the international capital market. Thus even if the United States exports no more capital than she did before the war, her relative participation will be larger, simply because the other countries' exports of capital will be smaller.

Of equal importance will be another change. In the past the United States exported capital only in times of prosperity. Therefore American capital exports have never been under pressure from an economy that was unable to exploit its productive capacity to the full. But in the future they will have the function of utilizing the country's productive capacity as completely as possible. For this reason, exports of capital and exports of industrial products will have to be tied up much more closely, and this alone will undoubtedly strongly affect the form that capital exports will take.

The total of 11.6 billion dollars of foreign investments made during the period between the two world wars consisted essentially of private loans and direct investments. The latter accounted for about 3.5 billion dollars—less than one-third of the total

exports of capital. The major part of the American capital exports affected American industrial exports only to the extent that they contributed to general prosperity in the debtor countries. "So-called tied loans—loans for which borrowers are contractually obligated to spend the proceeds in the lending country—were rare in the American experience." It was chiefly through direct investments that American industrial exports were boosted: "In the establishment of new American direct investments abroad the movements of capital and goods have often been even more inseparably bound together than in foreign dollar loans."<sup>13</sup>

It is difficult to say what proportions United States foreign trade would have to assume in order to produce decisive repercussions on the home market. It will be remembered that the Department of Commerce, assuming a continuation of the former relationship between production and foreign trade, estimates a maximum export total of 7 billion dollars for the year 1948. In 1943 American exports, consisting mostly of lend-lease supplies, totaled over 12.7 billion dollars. Let us assume, then, that in the transitional years after the war the old ratio between exports and production rises sufficiently to maintain the exports of 1943, about 1 billion dollars a month. In relation to the total American output at full employment this figure would not be overwhelming. Its effects on the American home market, however, would be far more significant than might appear at first sight.

Of these 12 to 13 billion dollars in American exports a considerable percentage would represent goods designed to stimulate the industrialization process in the industrially backward countries—such goods as locomotives, railway cars and all kinds of railroad equipment, bridges, ships, planes, machines, machine tools, electrical supplies, optical and chemical products, automobiles, tractors. In other words, a far larger percentage than in the past would consist of investment goods. And it is just in the

<sup>13</sup> U. S. Department of Commerce, Bureau of Foreign and Domestic Commerce, *The United States in the World Economy*, Economic Series No. 23 (Washington 1943) p. 157.

investment goods industries that production and productive capacity have reached an exceedingly high level in the course of the present war. Therefore if markets are opened up and organized for them in time, the result will be not merely additional exports of several billions of dollars but also even more important secondary consequences, since these industries are the ones most susceptible to crises. The threatening gap between savings and investments, which has played such a large role in recent American economic history, could thus be greatly reduced.

Moreover, the effects of any large-scale increase in American exports would not, of course, be confined to the industries making the exports. There would be, in addition, very considerable repercussions on the American home market. In the words of one of the Department of Commerce studies,<sup>14</sup> "Money received from exports and services does not forthwith exhaust its effects on domestic incomes but enters into the streams of money payments. In addition to those who derive income directly from foreign sources, others obtain employment and income indirectly as a result of exports and other transactions. These include persons engaged in supplying food, clothing, and other goods and services to workers employed in producing goods for export; makers of machinery, equipment, and plants used in export industries; and persons employed in other related activities, such as transportation, brokerage and insurance. . . . The total annual income of this country directly and indirectly derived from exports and other current transactions was several times the 6,266,000,000 dollar figure that these items averaged during the 1922-29 period." It can certainly be assumed that in the future, too, the indirect effects of exports on national income will be greater than the absolute figures.

# v

In general it is not doubted that the export of capital will temporarily increase the export of goods, especially if the condition is

<sup>14</sup> *The United States in the World Economy* (cited above) p. 154.

made that the money must to a large extent be used to buy American commodities. It is often doubted, however, that the effects will be more than temporary, since capital exports are not gifts but loans; in view of the necessity for interest and amortization payments, it is held that the initial increase in exports is likely to be followed by a retrogressive trend. The same reasoning leads also to the contention that the potential gap between savings and investments cannot be permanently closed by the export of capital; the gap, according to this argument, can be only temporarily narrowed, and will widen again after a shorter or longer interval.

Against this argument several points may be stressed. In the first place, to the extent that American capital exports represent direct investments—and in the future direct investments will probably constitute a much larger proportion of the total than in the past—this objection is not valid. Direct investments are of a more permanent nature than private loans, and, judging from past experience, a considerable part of the interest on them is likely to be used to expand the plant.

Furthermore, American capital exports were not confined to any single country in the period between the wars, nor will American capital go to only one country after this war is over. It will flow into quite a number of countries whose industrialization is at different stages. Thus any stoppage of capital to one country, and repayment of the borrowed money, can be accompanied by an increased flow of capital to other countries, with the result that the upward trend in the total volume of exported capital need not be interrupted for decades. In this way a breathing spell of considerable length could be created, during which an overall expansion of the world economy might sustain a rising level of American exports, and even a gradual rise of mass demand and home consumption might reduce the required minimum level of investment and thus the further search for foreign market outlets.

The true difficulties which may well hamper an adequate international development policy on the part of the United States

arise from quite different sources. There is not today, nor will there be immediately after the war, any pressure of surplus production that pushes toward the expansion of foreign outlets. On the contrary, right after the war there will be a more than adequate demand on the American home market. As the Department of Commerce has put it,<sup>15</sup> "The pressure to find large foreign outlets may not be serious in the immediate post-war years. For at least a brief time American production may have little difficulty in selling at home or abroad, most types of civilian goods, both producers' and consumers'." And again, even more explicitly (p. 5): "In the immediate post-war years exports will not be a wholly welcome outlet for the American economy. Foreign demand will compete with that in this country for the still scarce supply of goods and will contribute, as it did in 1919 and 1920, to the danger of inflation." The study continues, however, "Despite this disadvantage, a large volume of exports will be necessary in order to restore economic life abroad and will be desirable, in a more narrow sense, as a means of holding open trade channels for the long run."

One might go even farther. If greater pressure toward our support of the industrial development of other countries should develop only when demand on the American home markets falls off, then it will probably be too late to stop the retrogressive trend at home by increasing American exports, for in the beginning of industrial processes the tempo of development is slow, and the volume of needed imports limited. Therefore purposeful work in this direction must start immediately if it is to bear fruit later, in otherwise threatening crises.

Systematic preparatory work is necessary for another reason as well. The handling of large-scale exports of American capital carries grave risks in its wake, especially for the non-American world. For a small country the world economy as a whole, and the further development of that economy, is a fact which it cannot influence, to which it must adapt itself. But for the United

<sup>15</sup> *Foreign Trade after the War* (cited above) p. 1.

States, the greatest industrial nation in the world, which after the war may turn out more than half of the world's industrial output—for her the world economy is something on which she herself can have a decisive influence. This has been repeatedly evident, often in an unfortunate way. It was especially evident at the time of the last world crisis and during the subsequent years; then the extraordinarily steep retrogression in the American economy, plus the sudden stoppage of American capital exports and the withdrawal of a large part of American credits, crucially affected the entire world economy.

This time the danger may be still greater if, as can be expected, the proportion of American capital in the overall world export of capital rises very sharply—if, for example, it lies closer to 80 or 90 percent than to 50 percent—and if the American exports of capital and of industrial goods are more closely coordinated, with this country participating more directly in the industrialization processes of other countries. Strong reverses in the world economy would not, of course, leave the United States unaffected. As hardly needs stressing, it is in this field that economic and political problems are most intimately bound together.

*(New York City)*



# THE COMING PEACE CRISIS

BY ALVIN JOHNSON

**A**T LAST the United States is planning reconversion to peace. The Administration and Congress are beginning to take the problem seriously—even apart from politics. We shall go into civil production as soon as Germany cracks up, and we are assured that such production will promptly rise to the level of 1939. That is grand. After Japan cracks up we shall have another plunge into production for peace, and shall go far beyond 1939. We must. For there are twenty million war workers and ten million mustered out soldiers to be supplied with peacetime jobs—or to be maintained at public expense.

There is no inherent reason why the restoration of peace should bring on an economic crisis. A nation lives by the mutual services of its people. It can live well when the product of these services is abundant; it must live ill when production is feeble, as in India and China. Our country—not Japan—is the darling of the gods. Our soils produce in profusion everything that is needed for the full alimentation of our people. Our mineral resources are inexhaustible. Our science and technology have advanced to a stage in which any problem presented to them is on the way to solution the moment it is defined. As a rising chemist said to me: "There are near one hundred elements known to be of important use to technology. There is not a single one that is wholly indispensable." We can meet every human physical need with what we have. If we are wise. But that, alas, is a question.

When peace returns it will be possible for us to enter upon an era of nationwide welfare. Not ten percent of us have ever had all the material goods our natures crave. We are as a people badly housed. A hundred and twenty millions of us should have more space, more light, more peace, where our little children

may grow up to the pattern planted in them by the long selective process of human heredity. We are badly fed. There are still millions of Americans worse fed than the French were under the accursed regime of the Nazis. The figures for pellagra, a purely dietary deficiency disease, run into the millions. We are badly clothed. Take a trip through the Old South, home of Walter Scott romanticists and social reaction, and note the prevalence of rags in the land of cotton. We are badly equipped with medical service. In huge areas young mothers under the ministrations of neighboring old wives die in anguish before they feel their first born's breath, and infant graves are tragically multitudinous. We are badly educated. Millions of Americans have been excluded from military service because the Egyptian night of illiteracy made them incapable of understanding orders, incapable of participating in a national morale that makes death for one's country a privilege, though bitter.

But have we not done our best to make America a land of plenty, a land of hope and of freedom? We have at least tried, but the work is huge and the manpower has been inadequate. Yet this war and the last have proved that we have reserve power enough to maintain a fair standard of living while devoting half our manpower to the uses of war. If we can apply even one-half of this reserve power to the uses of peace we can make a reality of the American standard of living, not only for the majority but for all the people.

Our problem is to find places in civil production for twenty million war industry workers and ten million demobilized soldiers. These figures are of course subject to considerable deductions. Many workers who would normally have been superannuated are now in war production. There may be two million who will retire when the war is over. Many women who are working in factories while their husbands are overseas will wish to retire to their homes. There may be two or three million of these. We may be safe in assuming that five million in these two classes will take themselves off the conscience of our economic

statesmen. All they need to concern themselves with are the twenty-five million.

Of these a considerable number will flow back into the field of personal service, now seriously embarrassed for lack of manpower. Some will return to the farms, where the old and the very young have struggled desperately, and successfully, to keep up the level of production in spite of the withdrawal of huge numbers of the able bodied. But the number of men returning from the war industries to farm work is not likely to be large. There is nothing to indicate that farm prosperity will have advanced so far that wages can be paid sufficient to attract men who have tasted war industry pay checks. Nevertheless, the two categories of personal service and farm labor may drain away two or three million of our war workers and returned soldiers.

Unquestionably the peace will bring a great demand for consumers' goods, and this involves the expansion of production in many lines. We all want new automobiles, and we want service stations properly manned. We want improved housing; we want to replace much furniture deteriorated through the years of war; we want to renew our wardrobes. Some millions of workers will be needed for expansion of production. Moreover, our inventories are in the condition of Mother Hubbard's cupboard. To restore them to normal would take the work of millions of men through many months.

Surely ten million workers out of the twenty-five can find employment in the fields above outlined. Perhaps fifteen million. The precise figure is anybody's guess. It is anybody's certainty that there will be many millions of workers for whom placement is a serious problem. How are we going to take care of them?

Our thinking here tends toward two fairly well defined conclusions. The one premises a bold policy of governmental subsidies—liberal unemployment benefits, free transportation from areas where employment is shrinking to areas where it is expanding; maintenance through training periods more or less prolonged. The other conclusion is premised upon the organiz-

ing force of business initiative. Set business free; give it the assurance of government friendliness; disburden it of taxes—and we shall have an expansion of economic activity that will drain off any surplus of job seekers.

Neither conclusion can inspire complete confidence. Suppose that we have ten or fifteen million former war workers and ex-soldiers to support through governmental grants. We cannot fix the scale of grants at less than a hundred dollars a month. This would mean from a billion to a billion and a half a month to be raised through taxes or through public loans. But it is morally impossible to maintain taxes on a war level in peacetime. Our military expenditures will shrink—though not as much as we might expect—but our revenues will shrink too. As for financing workers' relief out of new loans, we need to bear in mind that we are already heavily laden with public debt, and will be much more heavily laden before the Nazis and the Japanese war lords have gone to their reward. The popular valuation of government bonds, wholly stable in time of war, easily turns to vacillation when the war is over. After the last war, although our debt was not one-tenth of what it will be at the end of this war, we saw government bonds selling well below par. Any policy that involves the steady increase in debt after peace has been restored may easily start bond prices downward, to the great distress of the millions of little people who have "backed the attack" with bond purchases they could ill afford. How will we float new issues when the two percents are quoted at 80?

Some of my fellow economists may urge that I am overlooking the influence of government grants upon business prosperity in general. The billion or billion and a half dispensed to the unemployed brings them into the market for goods, and this in turn leads to increased production and employment. It may be that the government grants of twelve or eighteen billions a year will increase production by twice or thrice that figure. It may be, indeed, if we don't weaken. But this offers no guarantee against

depreciation of bonds which, if serious, would slow up economic movement everywhere.

How about leaving the issue to business, liberated from the shackles of war regulations and disburdened of the excesses of taxation? We could indeed have a considerable expansion of business, with the absorption of some part of the army of the unemployed. But nobody can believe that private business, even if given free rein, would assume the responsibility of eliminating unemployment.

"Business" is an abstraction, covering the multitude of individual businesses, none of them in a position to trade for the public good. If a business finds it profitable to take on additional hands, it takes them on. If it finds that extensive layoffs would cut expenses more than receipts, or offers greater security in face of an uncertain future, the layoffs proceed. It is an immaterial consideration to the business that is retrenching that its policy cuts the purchasing power released in trade, and therefore induces retrenchment elsewhere. We saw in the crisis of 1929 how one business after another hastened to cut its personnel, until the effective purchasing power in the market forced more layoffs, in widening circles of disaster.

But if we can rely confidently neither on government nor on business to carry us safely through the peace crisis, is it not possible that the two together, in organic cooperation, could do the job?

Organizations of business interests are a familiar phenomenon in the United States. Hardly has any industry passed out of infancy before it organizes an association, an institute, a chamber, or what else may be invented by way of a public spirited name. All these organizations exist exclusively for the defense of their special interests. They assume that government and the public are hostile, and must be controlled through cajolery and pressure.

These organizations could be placed on a much higher level, their personnel greatly improved, if they could be drawn together under the leadership of the government to join in solving the

problem of full employment, not by debate and memoranda, but by working agreements, based on a recognition of the fact that employment in one industry means a market for the products of other industries; that each industry can make certain initial sacrifices that will prove to be no sacrifices at all when all work together.

Everybody knows that the equipment of our railways is on the whole a job lot of junk. The average age of freight cars must be around twenty-five years. The average age of locomotives is not much greener. This is the situation in an age of rapidly evolving competition on the highways and in the air.

To reequip, and to use the new equipment for more rapid and effective service, would mean much additional employment for the roads themselves, for the equipment companies, for steel and light metals. But the railways can't take a move in this direction until the banks agree to lend money on low interest terms, until the railway labor unions agree to operate the new equipment on an efficiency, not a make-work basis, until the governments, federal and state, agree to mend the discriminatory and socially injurious schemes of railway taxation.

I am not criticizing the several groups for looking after their own special interests. They have to do so. I am maintaining that in time of crisis all these special interests have to merge in the general interest. Business will have to evolve a new conception of responsibility.

Let us bear in mind this fact: Russia too will have some twenty-five or thirty million workers to divert from war and war industry. Will Russian statesmen lie awake nights worrying about unemployment? Certainly not. The veterans from the Ukraine will come back to the wheat fields to relieve the old men and children from the heavy toil on the land. The workers from the cities will return, to find every factory reaching out for more hands. Indeed, the Russians will find themselves so hard put to it to man the works they project that they will try hard to postpone final peace, so as to work their German slaves a year or two longer.



This kind of efficiency we do not pretend to emulate. The Russians attained it at a cost we do not care to pay. But if we drop into a deep slump that holds us bogged year upon year, with millions of workers dependent upon relief checks and wearing out their moral and physical stamina day by day, how will we like the comparison? Shall we try the desperate expedient of blindfolding and ear-muffling a hundred and forty million people, in the hope of keeping them ignorant of the fact that in Russia there is no unemployment, and the whole nation is working to meet the needs of the nation?

Americans are not by nature a stupid people. When they exhibit serious stupidity it is nearly always because they have plastered up their minds with decayed traditions, dead and dusty superstitions, like the tradition of the do-nothing government merely keeping the ring in which private interests wrestle or box, mostly with the outcome cooked up in advance, for a worthy consideration. If only we can scrub such rubbish off our minds, we will find a way to come together in the public interest and solve our problems of employment, while preserving that liberty of individual experiment and initiative that can be America's greatest gift to civilization.

# THE CASE FOR A JURISPRUDENCE OF WELFARE<sup>1</sup>

*Possibilities and Limitations*

BY ALEXANDER H. PEKELIS

Now take the map. The map is what we know  
And it means nothing. I've seen many maps,  
Talked to a thousand seamen, in my time,  
And, in the end, there is but this to say,  
One ventures as one ventures.

STEPHEN VINCENT BENÉT, *Western Star*

## I

1. The American Twenties and Legal Realism; 2. Legal Realism and the American Tradition; 3. Judicial Freedom for What?

DECENT respect for the patience of readers would seem to bar new dissertations dealing with the relation between law and the social sciences. The period between the two wars saw such a flourishing of schools of "sociological" or "experimental" jurisprudence, "legal realism," "social law," legal "fact-finding," "juristic functionalism," "institutionalism" and "pragmatism" that one may wonder whether any further exploration of the subject matter is needed. There is, however, a trend in the present attitude of American judges which is worth investigating. In one sense this attitude is the outcome of the modern schools. In another sense it represents, curiously enough, a reversal of their position.

1. It is impossible to do justice in a few paragraphs to the theories and the effects of these schools. It seems safe to say, however, that they have at least three main characteristics in common.

<sup>1</sup> The author is greatly indebted to Jerome Frank, Paul R. Hays, George Jaffin, Alvin Johnson, Adolph Lowe, Edwin W. Patterson, Herbert Prashker and Hessel E. Yntema, who had the kindness to read and to criticize in some detail previous drafts of this paper.

These are: an insistence on the gap between what the law appears to be in the books and what it is in reality; a feeling for the dissonance between the abstractness of general rules and the individuality of concrete cases; and an awareness of the creative nature of the judicial function.

The history of human institutions has seen many other occasions in which similar convictions have been expressed. It is not surprising that the strains of the American twenties prepared their reappearance. The rapidity of postwar changes once again made it clear that reality does not fit the pigeonholes worked out by lawyers. Once again thoughtful observers noticed that corporate practices were evolving outside of corporation statutes; that the distribution of interests and powers in a family bore little resemblance to the courtroom law on domestic relations; that mercantile custom governing the making, performance and breach of contracts had little to do with available textbooks. Even the behavior of those who were supposed to enforce the law was discovered to be different in fact from what law reports revealed on their surface. Legal realism stressed the difference between what judges and administrators were saying and what they were actually doing, and accepted Holmes' definition of law as the prediction of judicial behavior.

Another of Holmes' statements, "general propositions do not decide concrete cases," was also accepted and expanded into a philosophy in which there was no place for a conception of courts as merely the *viva vox juris*, or as Montesquieu has it, only the "mouth which speaks the words of the law." If judges—it was argued—are unwilling to admit, even to themselves, the degree of their freedom to create law, this is because it is easier to exercise authority by predicating it upon a law placed beyond the control of those who declare it. Sometimes—it was maintained—judges are haunted by an unconscious father complex, a childlike longing for legal certainty, in a world of chaotic dangers. Hence they dissect statutory provisions, weigh divergent lines of precedents and select admissible items of evidence, destined to form

the so-called facts of a controversy, knowing little, and telling less, of the motives that actually prompted their choice, of their bias and favor. But the truth of the matter is that in the main they are lawmakers, not lawfinders.

2. Similar theories had been developed in Europe long before legal realism became popular here. Some facts in this connection are remarkable. Academic influence upon legal public opinion has always been considerable in Europe. The "realistic" theories were advanced by writers of high personal prestige, such as Ihering, Duguit and Gényn. Nevertheless, their teachings exercised no appreciable influence upon the European lawyers' state of mind, and were, on the whole, confined to the museum of legal curiosities. Pre-totalitarian Europe remained faithful to the dogmas of legal certainty and of the interpretative function of judges.

The resulting legislative monopoly of lawmaking—or at least the belief in it—may have been only a carryover of the contrast, strongly felt in pre-revolutionary France, between the popular personnel of the parliaments and the royal appointees who manned the courts. Similarly, the success of the realistic theories in the United States may have been due to a more or less conscious desire for a liberalizing legal reform. Such a reform, in a country where legislation is limited both by a constitutional ceiling and by a common law floor, could hardly be achieved through ordinary legislative activity. What was needed was, in some fields, a constitutional amendment, in others, an unprecedented legislative invasion of the traditional domains of decisional law—or a change of the judicial mind. The latter alternative required, of course, the reeducation of a generation of lawyers, and legal realism may be justly proud of having partly succeeded in this task. It is not surprising that a country of Anglo-Saxon traditions preferred a revolution by education to the familiar pattern of education by revolution, which may yet prove to be the European way toward legal realism.

Deeper causes have also influenced the result. Doctrines of

judicial freedom are as incompatible with the continental or, if you please, Cartesian tradition, as they are consistent with the experimentalistic preferences of Francis Bacon, philosopher and attorney general, whose contribution to the shape of Anglo-American legal institutions is generally underestimated. In reading the pleas for a free law (*freie Rechtsfindung*) or the good judge (*le bon juge*), which sounded utopian in Germany and France, some common lawyers must have felt like Molière's Monsieur Jourdain, who in his first philosophy lesson learned that he had always been speaking in prose; and they began to be less apologetic about their uncoded laws and their unsystematic legal science. Doctrines of judicial freedom were at any rate a fitting rationalization of the position in which judges and administrators found themselves by virtue of the American constitutional and legislative technique.

It must be remembered, indeed, that in a sense the United States has no written constitution. The great clauses of the Constitution, just as the more important provisions of our fundamental statutes, contain no more than an appeal to the decency and wisdom of those with whom the responsibility for their enforcement rests. To say that compensation must be "just," the protection of the laws "equal," punishments neither "cruel" nor "unusual," bails or fines not "excessive," searches and seizures not "unreasonable," deprivation of life, liberty or property not "without due process," is but to give a foundation to the law-making, nay constitution-making, activity of judges, left free to define what is cruel, reasonable, excessive, due, or for that matter, equal.

In their turn, Congress and state legislatures have long adopted the same technique in many a strategic spot. Rates were required to be "just and reasonable," consolidations of carriers in the "public interest," regulation of radio stations inspired by "public interest, convenience or necessity," methods of competition not "unfair," allocation of marketing areas among states and producers made with due consideration of economic factors, and

intra-industry classifications based on a number of named and unnamed "relevant factors." Nor is it sure that the majority-getting mechanics of the modern legislature permits any less ambiguous drafting.

I do not contend that all constitutional or statutory provisions leave the determination of their content to judges. The Seventh Amendment, for instance, prescribes that "in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved"—and I concede that it would be difficult to interpret twenty dollars to mean fifteen or twenty-five, although, in an inflationary situation, it could easily be construed to mean two thousand. But when is a suit a "suit at common law" rather than in equity? When is a trial a "trial by jury" rather than a trial by the judge, who directs a verdict or enters judgment *nonobstante veredicto*? An analysis of our statutes and constitutions may reveal a great many precise and important provisions. The only trouble is that the precise ones, such as the twenty-dollars provision, are rarely important, and the important ones, such as the due process clause, are rarely precise.

3. It would be wrong, however, to conclude that the rise of legal realism only revealed a peculiarity of the American institutions without changing them. The revelation itself was bound to operate a transformation. The king in the fable had long been naked and—although Andersen does not say it—a few sages, like Bacon, Bishop Hoadley, Holmes, had always known it. But it certainly made a lot of difference when that lovely boy shouted it out in the street. True enough, the lawmaking freedom of judges and administrators was only a feature of the "common law tradition." But now, as the Bible has it, their eyes were opened and they were as gods knowing that they were free.

The consequences of this consciousness were bound to be considerable. To begin with, when realists became judges or administrators they found less gusto in the emphasis upon the discrepancy between books and reality. Somehow, first-person realism—



"law is what we judges do in fact, not what we say—sounded far less appealing. It was hardly helpful to persist in defining law as the prediction of judicial behavior, since no judge could regulate his own behavior by trying to predict it. If it is true that the mere presence of an observer influences the reality being observed, the nature of the judicial process had to change when judges began to philosophize about it or when philosophers, searching the reality of judicial law, became themselves the reality they were looking for.

The resulting transformation of the judicial process is not everywhere equally apparent or deep. But, on the whole, leading legal opinion knows today that policy-making only begins with the adoption of a constitutional amendment or of a statute. Leading judges in their turn avow that they cannot be expected to be more certain about the course of their action or more infallible than other men, including legislators.

It is against this background of skepticism and freedom that a quest for a new framework of references develops. Realists in the law schools have sought to borrow the methods of the social sciences in the investigation of what the living law is. Today realists in positions of responsibility turn to the social sciences for guidance not in the description but in the shaping of legal reality.

A great many contemporary judicial decisions show this three-fold leitmotif—awareness of freedom, confession of fallibility and quest for extra-legal guidance. A recent opinion of a federal district court has it that judges are now willing "to modify their procedures so that there may be a more realistic trial of the complex issues of economic fact and industrial policy," and "to accept economic testimony appropriate for laying down a broad rule of industrial government." The attitude is more pronounced in the appellate courts, and particularly in the federal judiciary. In *Wickard v. Filburn*, decided on the first day of its 1942-43 term, the Supreme Court of the United States said that "questions of the power of Congress are not to be decided by reference to any

formula," and that the "economics of the wheat industry" rather than the "mechanical application of the legal formulae" should determine the constitutionality of a certain application of the Agricultural Adjustment Act. On the last day of that term, taking an analogous stand in the field of political liberties, the court asserted that the Constitution was not meant to be a "political straitjacket for the generations to come" (*Schneiderman v. United States*). During the same term the Supreme Court Justices refused on many occasions to bow to the consequences "that would flow from [a] legalistic notion" (*Williams v. North Carolina*); to "extract from episodes in isolation abstract questions of evidence and procedure" (*Johnson v. United States*); to be "confined to so mechanical a test" (*Parker v. Brown*); or to treat a constitutional dictate "as though it were a mathematical abstraction, an absolute having no relation to the lives of men" (*Martin v. City of Struthers*).

They know how difficult it is to draw the line even between a "purely commercial activity and a religious one" (*Murdock v. Pennsylvania*), and do not assert "pretenses of exactitude" or "scientific validity" (*Group of Investors v. R. R.*). Judges "frequently reach different conclusions despite the fullest and most careful examination of all available data, including the difference of opinion on the part of their associates" (*De Zon v. American President Lines*). They are not faced with "a question in algebra as to which there is a demonstrably right or wrong answer" (*Altwater v. Freeman*), and—as the court said this year—in some situations "doubts will remain whichever way the case [is] decided" (*Davies v. Bowles*). Again, "words are inexact tools at best" (*Harrison v. Trust Co.*) and their "uncritical use bedevils the law" (*Tiller v. R. R.*). "Nor is the matter aided by "substituting one general formula for another" (*Galloway v. United States*). The court is aware of the fact that "this does not satisfy those who seek for mathematical or rigid formulae," but emphatically warns that "such formulae are not provided by the great concepts of the Constitution."

## II

4. Welfare Approach in Private Law; 5. Welfare Controls of an Economy;  
6. The Judge's Dilemma; 7. An Educational Challenge

4. One need not take these statements at their face value to admit that they indicate the existence of a situation which is big with hopes and dangers. To speak first of hopes, it may be the dawn of a new judicial approach, the beginnings of what I should like to call a jurisprudence of welfare. In other words, our judges, who have long been asking themselves a series of inadequate questions about canons of construction, intents of the legislators or lines of judicial authority, may be about to ask themselves, with increasing frequency, the only question that really matters: "Which course of my action—which rule of law—is going to serve best the general welfare of the society I am sworn to serve?" And they may be inclined to ask this question openly and explicitly, and attempt to answer it intelligently, with the help of all available data that the social sciences can offer.

A responsible judicial approach based on the utilization of such data could build upon foundations already laid by legal writers in many fields of public and private law. Thus, for instance, the recognition of the risk-spreading function of the law of torts hinged the intrinsic validity of that law on the degree to which society's welfare is served by the adopted patterns of distribution of risk. The recent exposition of the importance of "constructive conditions" read by judges into contracts of private parties has further weakened the notion that a contract is the creature of the contracting parties only, and has called the attention of lawyers to the degree of influence exercised by community conceptions of propriety and usefulness. Studies of the "unexpressed major premise" in mental incompetency, undue influence, and fraud cases have shown how their results depend on the evaluation of the social desirability of enforcing the particular contracts being litigated, rather than on the objective appraisal of the existence of the pleaded vices of consent. A more general view has led to the identification of a wide category, of daily increasing impor-

tance, designated as "compulsory contracts" and dominated by the social notion of expediency and fairness rather than by that of individual consent.

The importance of the welfare question and the necessity of furnishing an intelligent and informed answer to the so-called problems of public policy becomes increasingly apparent as one moves from the classical fields of contracts or torts to laws governing domestic relations, business organizations, insurance, special commercial transactions, or conflict of laws. A moderately close analysis of the crucial issues with which courts are confronted in these fields shows that they cannot be solved by legal syllogisms only, or without making a more or less conscious choice between alternative social policies. And it hardly seems desirable that this choice be made, as it only too often is, without any real information about the social reality upon which the force of legal measures falls—without any real knowledge about the direction, sharpness or depth of their incidence.

5. The welfare approach to legal questions seems particularly promising in the regulation of economic activity. The machinery of antitrust statutes could be put to work in a more useful fashion if, for instance, the theories of imperfect or monopolistic competition were permitted to exercise an influence upon the judicial doctrines governing the practices of freight absorption, the adoption of single and multiple basing points, or the protection of marginal producers by trade associations. To give just one specific example, the struggle between mail order houses and local storekeepers, still spoken of as a struggle between monopoly and competition, would receive a new significance if the attempt were made to determine which of the two exercises a greater degree of monopolistic power over prices.

But the field in which cooperation between lawyers and economists could be particularly fruitful is, I think, that of public utilities. The public service commissions, for instance, have not yet fully realized the nature of their rate-making task. Although it is becoming increasingly clear that in many instances the

practical value of an enterprise depends on the rates which it is allowed to charge, the commissions are still working on the presupposition that the permissible rate must be derived from the value of the enterprise, the so-called rate base.

Mr. Justice Jackson, dissenting in the recent case of *Federal Power Commission v. Hope Natural Gas Co.*, has forcefully challenged the derivative nature of the price concept. "Is it necessary to a reasonable price for gas that it be anchored to a rate base of any kind?" asked Justice Jackson, and he concluded that "the reason for resort to a roundabout way of rate base price-fixing does not exist in the case of gas in the field." Although Jackson's conclusion was predicated upon the special characteristics of the natural gas industry, I suggest that it is equally true in the field of utilities in general. The circularity of the customary reasoning becomes apparent when, in a reorganization procedure, the Interstate Commerce Commission, in the exercise of the federal bankruptcy power, declares that it will evaluate a railroad's property by capitalizing the rate which the carrier will probably be allowed to charge for its service. This rate, however, has to be allowed by the same Interstate Commerce Commission, acting as a regulatory agency, on the basis of the value of the railroad independently arrived at.

The welfare inquiry broadens the task of utility regulation. Commissions and courts may be called upon to go beyond the determination of the proper return based on past, present or future-trended value of the utility's property. They may be compelled to determine specific prices and rates with more regard to their social function, and thus shift the emphasis from the producer to the product, and to its consumer. Hence they may be called upon to decide how the total burden of fixed joint and overhead costs should be distributed among the various groups of consumers. Mr. Justice Jackson asked that the rate order in the Hope case be remanded to the Federal Power Commission because it failed to investigate which utilization of natural gas offers the "highest social as well as economic return." Jackson's

own opinion was that natural gas has unique advantages for domestic, as distinguished from industrial, consumers, and that the company should be required to discriminate actively in favor of the former. This, to Justice Jackson, is "the true public utility aspect of the enterprise and its preservation should be the first concern of regulation."

I wonder whether the nature of the rate-making process could not be better understood, and the function better performed, if the studies of Frank Knight on risk, uncertainty and profit, or the more recent writings of Hotelling or Lange on the function of price in socialist and capitalist economies, were properly considered. Such study would probably lead to a recognition that the present extent of governmental price-making is not only a profit-limiting device, but also an experiment in welfare price-making, capable of becoming the legal foundation of an economic democracy. In Mr. Justice Jackson's words, "we should recognize 'price' for what it is—a tool, a means, an expedient," used "to reconcile the private property right society has permitted to vest in an important natural resource with the claims of society upon it—price must draw a balance between wealth and welfare."

6. The case of *Federal Power Commission v. Hope Natural Gas Co.*, from which I have been quoting, illustrates the general situation of the courts in the fields where legislation requires implementation by administrative action. For decades liberals have advocated the repudiation of *Smyth v. Ames*, which had read into the Constitution the requirement of specific methods of valuation and rate-making. In the *Hope* case, decided last January, the Supreme Court has laid that ghost and declared that, from now on, it is not concerned with the theoretical propriety of the valuation and rate-making formulae, so long as the results reached are satisfactory.

The victory left many a liberal wondering. Justice Jackson objected that he "had no instinct by which to know the 'reasonable' from the 'unreasonable' in prices and must seek some conscious design for decision." Justice Frankfurter joined in the



dissent and remarked that it "will little advance the public interest to substitute for the hodge-podge of the rule in *Smyth v. Ames*, an encouragement of conscious obscurity or confusion in reaching a result, on the assumption that so long as the result appears harmless, its basis is irrelevant."

This language has been treated as merely additional evidence for the conventional picture of Justice Frankfurter betraying the liberal ideas he professed in law school. The truth of the matter is that it shows an awareness of the new task liberal judges face today. After having won the war against conceptualism, the realists must, as the phrase goes, win the peace. To be an anti-fascist in northern Italy today is an heroic title. But a man must be more than just an antifascist in the south, where you have to make up your mind on a number of annoying issues, such as Badoglio, Stalin or the way you are going to pay workers, run railways or just feed people. This is, I think, what Justice Jackson meant when he said, "If we are to bring judgment of our own to the task, we should for the guidance of the regulators and the regulated reveal something of the philosophy, be it legal or economic or social, which guides us."

Strange as it may be to find the foundation of a welfare jurisprudence in the opinions of the author of *The Struggle for Judicial Supremacy*, the quoted language supports the contention. Justice Jackson makes his new attitude explicit when he adds, "If, on the other hand, the court is to hold that a given rate is reasonable just because the Commission has said it was reasonable, a review becomes a costly, time-consuming pageant of no practical value to anyone."

The plea for a jurisprudence of welfare has thus definite political meaning. As in every society, the struggle for lawmaking supremacy is going on in America as well. The distribution of powers among lawmaking institutions has always been, in fact, a matter of compromise determined by political or even partisan reasons, sometimes cloaked in philosophical solemnities. The position of the Roman praetor, Montesquieu's separation of

powers, the doctrine of judicial review in *Marbury v. Madison*, are but instances of such political compromises. Institutions, however, have a weight of their own, and are one of the pulls of the social parallelogram of forces. Today the position of the administrative agencies is in the center of attention. They have conquered advanced positions and are threatening to reduce the courts to an uncomfortably inferior position. This worries those who happen to believe not only that effective legislative or administrative action and intelligent judicial review thereof are compatible, but that their balanced coexistence is the essence of constitutional government—without which, I should add, federalism itself would shrink to mere administrative decentralization. The political equilibrium is threatened today because administrative agencies have seized the weapons offered by social science technology and outdistanced the courts, shackled by their innocence of the methods of modern economics or psychology.

Justice Jackson remarked in the *Hope* case that regulation of the natural gas industry must be treated "as the performance of economic functions, not as the performance of legalistic rituals," and it is obvious that if this viewpoint is accepted, courts will have to get the necessary equipment or be driven off the field of regulation. In another recent case a dissent, written by Mr. Justice Roberts to attack the constitutionality of the Emergency Price Administration Act, has thrown incidental light upon the plight of the judiciary. "No court is competent," Justice Roberts complained, "on a mass of economic opinion consisting of studies by subordinates of the Administrator, charts and graphs prepared in support of the studies, and economic essays gathered hither and yon, to demonstrate, beyond doubt, that the considerations or conclusions of the Administrator from such material cannot support the Administrator's judgment that what he has done by way of regulation or price schedule tends to prevent post-war collapse of values, or to prevent dissipation of defense appropriations through excessive prices, or to prevent impairment of the standard of living of persons dependent on life insur-

ance, or to prevent hardship to schools—to enumerate but a few of the stated purposes of the Act.” Mr. Justice Roberts concluded that the court should strike down the statute, because its standards, when considered in the light of the limited competence of the courts, were too indefinite. But is it true that the courts are left with the choice of being a rubber stamp or a bottleneck?

I submit that the judge’s dilemma can be avoided if courts acquire that minimum knowledge of social science which would enable them to exercise a commonsense control over the charts and economic essays which looked so wild to Mr. Justice Roberts. Unless we are resigned to a government by technicians, and ready to submit to a totemistic symbolism evolved by the social sciences, we must be ready to learn their language and, as it were, to see through their charts and graphs. Unless social scientists learn the language and techniques of the law, or lawyers learn their language and techniques, we are bound to see the rise of absentee ownership of the governmental apparatus and witness a new divorce between real and nominal power.

7. Jurisprudence of welfare is thus fundamentally an educational problem. One of the tasks that educators face today is to narrow the appalling chasm between those who, in schools and research centers, study our community, and those who, in legislative committees and courts, shape its life. The clear-cut separation of law schools from schools of politics, economics and sociology has led to a corresponding separation of the scientific activity of the two groups. Quite naturally, within each of them, a trend away from the slippery borders has developed. The combined effect of these trends has created a scientific no-man’s land which has become covered by dense conceptual and semantic hedges. A common effort is needed to cut them back.

This situation has placed a great responsibility upon the social scientists. Whether they like it or not, they won’t be able to escape it. I do not underestimate the need for investigation free from non-scientific pressures, or the value of social studies developing beyond the concepts of good and bad. There is no question,

however, but that the coming decade will exercise increasing pressure upon social scientists. Nor is it sure that this "social commission to scholars," as the early Soviets called it, will exercise a detrimental influence upon the social sciences. It is true that scholars and artists have always longed for freedom from patrons, but the record is somewhat ambiguous as to the justification of their desire. Even the strictness of the "social commission" of the Renaissance popes does not seem to have killed Renaissance art.

It is also a matter of record that, in fact, the social sciences have never been totally *wertfrei*. A book of Myrdal, the Swedish economist, on *The Political Element in the Formation of Economic Doctrines* seems written by a legal realist. Some of its passages, showing how much policy objectives have influenced economic theory, sound pretty much the same note as does *Law and the Modern Mind* in its analysis of the motivations of legal theory. A participation of the social sciences in the development of a welfare jurisprudence may bring the normative elements in social science into the light of consciousness, and thus contribute to a healthy development of social theory. In short, welfare jurisprudence may offer an opportunity to answer not only the question, "How do and how should legal institutions shape social reality?" but also the question, "How important for the life of a society are social sciences?" If compelled to present the results of their laboratory investigations to an audience of intelligent laymen, charged with social responsibilities, social scientists may discover that they and their disciplines are undergoing a severe test conducive to real progress. Welfare jurisprudence may thus become a testing ground of the incidence of legal institutions and of the relevance of social studies.

### III

#### 8. A Summary of Objections

8. To the contention that judges should openly ask and discuss the welfare question, and attempt to answer it with the help of

available social science data, a number of forceful objections may be formulated. They are likely to center on some variation or combination of three main groups of ideas, which may be summarized as follows.

In the first place it will be said, of course, that the welfare question should be asked, and the available social data should be considered, not by judges but by legislators. And this proposition, in turn, will be justified by various considerations or presented from various points of view. a) If ours be a government of laws and not of men, we must be ruled by general and impersonal propositions formulated without regard to individual litigants, applying with the same rigor to all of them. b) If courts are left with the power to ask the welfare question they will be tempted to change their answers with every blow of wind or mood of fashion and their decisions will come "into the same class as the restricted railroad ticket, good for this day and train only"; this would gravely impair the stability of the legal system. c) There is a particular injustice and hardship in "judicial legislation" because, unlike a new statute which is binding only for the future, the decision of the courts purports to be only declaratory of the law, and thus applies retroactively. d) If the welfare of the people requires a change in the law it must be made by the people themselves, through their duly elected representatives, composing their legislative assemblies.

The second group of objections may center on the notion that the pursuer's full awareness of his goal does not necessarily promote the success of his pursuit. It may be maintained, indeed, that most lawmakers have asked the welfare question, at least unconsciously or secretly, and that judges too must have done so, to the extent that they were lawgivers. Against the background of these contentions several more specific objections may be stressed. a) The awareness of his lawmaking function and a conscious pursuit of welfare do not necessarily make a man, or a judge, a good or better lawgiver. b) Even if judges should be perfectly conscious of what they are doing, people, for their own

good, should not be told of the degree of judicial freedom—and, least of all, in judicial opinions.

Finally, objectors may challenge the usefulness of injecting the welfare concept into the judicial process. a) To begin with, the agreement that laws, judge-made and others, should be good (or serve the general welfare) is as general as the disagreement on what serves the common good. b) The difficulty is not solved by reference to the social sciences, for there is no agreement among social scientists in general, or even among the students of a single branch of social studies, on what is welfare, on what are the means of furthering it, on whether or not it is proper or possible for the social studies to give guidance for the solution of social problems. c) If, on the other hand, some social scientists—not necessarily the better ones—should prove willing to provide such guidance, the result might be intolerable paternalism, a tyrannic government by experts.

It may be said at the outset that some, if not all, of these objections have considerable philosophic validity, and that, however great my inclination to disagree with them ultimately, I shall not attempt, in this writing, to demonstrate their theoretical fallacy. It will be sufficient, for present purposes, to point out that the alternatives these objections tender—implicitly, since their explicit formulation is extremely rare, and this for reasons to be stated—are at such variance with the fundamentals of American society that an attempt to effectuate them would encounter far greater difficulties, and lead to consequences more upsetting and revolutionary, than may be apprehended from the development of a welfare jurisprudence.

#### IV

9. Government by Law and the Unfinished Statutes; 10. Law as the Foundation of Welfare; 11. Legal Stability and Legal Change; 12. Retroactivity, a Welfare Problem; 13. Judicial Legislation and Popular Sovereignty

9. The argument that the welfare question should be asked in the legislatures, and there answered, with the help of pertinent



data in the form of impersonal propositions, free from any regard to individual litigants, was forcefully stated by Beccaria: "The disorder which arises from a rigorous compliance with the letter of a criminal statute cannot be compared with the disorders which arise from interpretation. . . . When a fixed code of laws . . . leaves to the judge no other task than to examine the acts of a citizen and to adjudge whether or not they conform to the written law; when the norm of right and wrong, which must lead the actions of the ignorant citizens as much as of the citizen-philosopher, is a matter not of controversy but of fact; then subjects are not exposed to the little tyrannies of the many, so much more cruel as the distance between the one who suffers and the one who makes him suffer is the smaller."

I do not underestimate the weight of this argument, which has had among its advocates the noblest minds of many a century. For the purposes of this inquiry it is not necessary, however, to reopen the ancient question, not confined to the realm of political philosophy, on the relative weight and value of general rules and individual variations. Nor need we discuss whether the ideal of a Benthamian code—which would deprive the judges of their power to interpret the law, do away with the uncertainties of the jury room, the chancellor's chambers and the administrator's office, and strike at the root of legal esotericism by suppressing the legal professions—can be approximated any place where men are human.

I shall remark presently on the essential relation between laws and welfare. At this point it seems sufficient to say that whether or not a type of legislation which would eliminate the need for judicial lawmaking is desirable or possible, precious little of such legislation is to be found on the books today. On the contrary, the weight of the traditional common law ideology, and the techniques of American political and legislative machinery, have joined forces to multiply the instances wherein legislators give judges no better guidance than adjectives such as "just," "reasonable," "fair," "convenient," "adequate" or "proper." And the

greater the strategic value of a given provision, the greater the likelihood that the legislative majority for its adoption will be gathered through the use of "neutral" words which do not pre-judge the issue. When this is the case it is flatly impossible for judges to proceed in the manner advocated by Montesquieu, Beccaria or Bentham.

The admissibility of "judicial legislation" is a legitimate and burning issue in countries that have made at least an earnest attempt to heed the call for codification, launched by the philosophers of illuminism. My argument would obviously be inadequate if I were confronted with a serious revival of the Benthamian advocacy of welfare by unambiguous legislation. So long, however, as Bentham remains no prophet in his common law homeland, the real question is not whether judges should finish the job left unfinished by constitutional conventions and legislatures, but whether they should do it in full awareness of their lawmaking functions, and with the avowed aim of serving the welfare of their community.

It is true that there are many fields, and fields of vital importance, where the unfinished job is left to administrative agencies. There, of course, the courts could refuse to give any intelligent contribution to welfare problems, by either supinely approving or blindly obstructing all experiments, innovations or extravagancies of the bureaus. Either course would mean the end, in one or another form, of judicial review. And if the judiciary chose to be bottleneck rather than rubber stamp this could not long postpone the inevitable. But whether judicial review perishes from atrophy or from over-exertion, the opponents of "judicial legislation" will hardly be pleased with the result. Nor can I imagine any meaningful judicial control of administrative activity which would not follow, in substance, the methods and the criteria of a welfare jurisprudence.

10. A further investigation of the objection I have been discussing should make clear another point, which is quite independent of the impossibility of practicing judicial aloofness in

a country where no corresponding ground has been laid by legislators. This point is that the ideal of a jurisprudence of welfare is in no way inconsistent with that of government by law.

The notion that government by law presupposes and requires a legislative lawmaking monopoly may have been justified in a given historical and political setting, but, considered in itself, it is totally unwarranted. Such a monopoly is neither sufficient nor necessary for the preservation of the ideal of government by law: on the one hand, statutes, and, indeed, constitutions, may and sometimes do contain *ad personam* provisions which fly in the face of that ideal; on the other, the ideal has often celebrated its highest expression in catholic rules of purely judicial origin.

The real test is not by whom an order is given, or whether it is given in a general and impersonal form or on the occasion of particular litigation. The test is whether or not the order is predicated upon a maxim capable of acquiring that universality which characterizes law in its higher sense. Welfare jurisprudence should never attempt to escape this fundamental requirement. It would misconceive the essential relation between law and welfare if it neglected the truth that law is an element in and, indeed, the foundation of welfare itself. The question "what is good for our society?" is crucial, and must be asked by all those—be they legislators, judges or administrators—who are in fact entrusted with lawmaking functions. And it must be answered with the help of all pertinent non-legal data, originating in the social studies or elsewhere. The answer itself, however, must be a *law-making* one.

Jurisprudence of welfare must not be corrupted into a jurisprudence of expediency. It must remain faithful to Goethe's admonition that "man where he appears significant behaves as a lawmaker." The expediences of specific situations must be valued from a general viewpoint and shaped into an intelligible pattern. It is not enough that specific actions of governmental agencies be wholesome and serve the expediency of the moment and the needs of an individual situation. In the

words of the Nichomachean Ethics, "to be just, they must be done and distributed in a certain manner. And this is a more difficult task than knowing what things are wholesome." A true jurist, mindful of the general welfare, instead of merely investigating what specific judicial action or administrative measure would best serve the public welfare in individual situations, will ask himself what canon of action can best serve that purpose, upon what maxim, capable of becoming a universal law, the specific measure can be predicated.

Concrete cases cannot be decided by general propositions—nor without them. Even in the most narrow sense welfare is measured not only by the absolute amount of goods and services enjoyed by men, but by their relative distribution as well. In this sense, welfare and law both come under Dante's definition of law, as proportion of man to man, the *hominis ad hominem proportio*. It may be possible to psychoanalyze away the father complex and the quest for security. But the quest for a conformity to rules, for a recognizable pattern of action, for an *ordo voluntatis*, is nothing else than a quest for harmony and beauty. It is a trait of mankind; even more, it is the mysterious prime force of our universe, which gives a rhythm to the crooning of savages and the games of children and a geometrical form to the crystallization of salt.

The economic and social facts of life, which legal realism has taught us, have banished the belief that judicial decisions are brought readymade by constitutional storks. This discovery should not, however, lead to a cynicism as silly, in its own way, as the stork tale. To follow the metaphor, one should not forget that mere lust could not have made man into what he is now; that, in other words, love is a biological fact without which the present state of the human race would be inconceivable. Similarly, society cannot be built upon judicial whim or expediency alone. Human craving for regularity and legality is the foundation of society, and its satisfaction a condition of welfare. The framers of the greatest codification undertaken among the western

peoples, the Corpus Juris Justinianensis, were aware of the nature of this quest—and of the metaphor I have traced—when they dedicated their work to the “youth longing for laws,” *legum cupidae juventuti*.

11. The foregoing discussion of the first and fundamental objection to welfare jurisprudence is a sufficiently clear indication of the answers to the other objections of the same group. It may be useful, however, to dwell a little on them, in order to make even more explicit what welfare jurisprudence is not intended to be.

To begin with, the principle that courts should always ask the welfare question does not mean that their decisions would be like “tickets good for this day only.” Having determined that a new rule of law will serve the welfare of the community better than the old one did, courts must ask themselves whether welfare will be served by the change at the time their decision is being made. Stability has an obvious social, political and moral value, which it would be foolhardy to deny. Builders would build in vain if the material they use did not embody the great force of this universe, inertia. Political and legal institutions of every people testify to the recognition of this force. Statutes of limitations, acquisition by prescription, the principle of *res judicata*, other forms of finality of judgments, references to custom, the fiction of “lost title”—all show that society recognizes what Jellinek called, in another connection, the normative force of facts, and what could also be called the moral power of time.

Inertia, however, is a good servant and a bad master. Skyscrapers cannot be built without inertia—or by it alone. If evidence were needed of the political wisdom of the common law it could be found in its attitude toward the problem of legal stability and legal change. On the one hand, the common law evolved—to be sure in chancery, where, paradoxically enough, the common law found its most distinctive features—the concept of laches, which bar an equitable suit and freeze the factual

situation even before the period of limitation has completed its course. On the other hand, the inexhaustible arsenal of chancery furnishes the courts with weapons, hardly known in civil law countries, for overcoming the rigidity of *res judicata*, thus divesting it of the sacrosanct character it possesses elsewhere. On the one hand, there is a suggestion that the United States Constitution itself requires that judicial decisions possess a certain degree of finality, without which there could be no exercise of the judicial function. On the other hand, it is held that the Constitution forbids the attribution of an excessive degree of finality to judgments, which must always remain open to challenge on certain grounds.

American courts have accepted the principle of *stare decisis*. But they have never treated it as a master. It is too late in the day to advance the claim that no precedent should ever be overruled. As the Chief Justice of the United States has recently put it, "to give blind adherence to a rule of policy that no decision of this court is to be overruled would be itself to overrule many decisions of the court which do not accept that view." The real problem is not whether, but when, precedents should be overruled.

A court is faced with the problem of *stare decisis* only when it is reasonably satisfied that the old decision is wrong, or that the issue would have been decided differently if it were presented in a case of first impression. Since no court believes that precedents should never be upset, judges who think that a "decision cannot be determined by results which may flow from it" may be tempted to overrule every obviously "wrong" decision. Only judges who have the courage to ask themselves, "right or wrong, would the change serve the people's welfare?" will have any criterion on which to base a distinction between precedents to be disregarded and those to be honored. Welfare jurisprudence may thus prove an element of stability as much as an inducement to change.

A recent, and already famous case, decided by the United



States Supreme Court, affords a vivid illustration. When that court was asked to reverse the long established persuasion that insurance is not interstate commerce, it was the minority, arguing against reversal, that approached the problem from a welfare angle. After having recognized the limitations of the doctrine of *stare decisis*—I have just quoted his words—the Chief Justice went on to argue that right or wrong is not the ultimate test which should govern the overruling of precedents: “. . . the rule of *stare decisis* embodies a wise policy because it is often more important that a rule of policy be settled than that it be settled right.” The practical effects of the decision should guide the court’s choice. “And before overruling a precedent in any case it is the duty of the court to make certain that more harm will not be done in rejecting than in retaining a rule of even dubious validity.” When the court finds that this would be the case, this finding “might well stay a reversal of long established doctrine which promises so little of advantage and so much of harm. For me these considerations are controlling.”

Mr. Justice Jackson made it equally clear that his refusal to overrule the insurance precedent was predicated on welfare considerations. “Abstract logic,” he said, “may support [the majority], but the common sense and wisdom of the situation seem opposed. It may be said that practical consequences are no concern of a court, that it should confine itself to legal theory. . . . I think we not only are free, but are duty bound, to consider practical consequences of such a revision of constitutional theory. This court only recently recognized that certain former decisions as to the dividing line between state and federal power were illogical and theoretically wrong, but at the same time it announced that it would adhere to them because both governments had accommodated the structure of their laws to the error.”

The problem of relation between stability and change cuts right across the dogmas of separation of powers, and has little, if any, relation to the problem whether judges should have the power to make law. Legislatures and courts may both err in

the timing of changes, and may be either behind their time or before it. Nor does the simple asking of the welfare question guarantee that a correct answer will be given. But no matter how fallible legislators or judges may be in administering the test, it seems obvious that only considerations of the wholesomeness of a given change, at a given time, in a given society, and not abstract logical theories on the limits of *stare decisis*, can furnish intelligent guidance. And the test would seem particularly appropriate in a country whose foremost tradition has been the tradition of change.

12. There remains, however, the argument that a different test should govern the changes in judge-made law because, unlike new statutes, new judicial doctrines apply immediately and retroactively, thus causing "confusion, surprise and injustice."

There is no doubt that a certain amount of non-retroactivity of the law is a condition of its wholesomeness. It is equally true that all new laws, like all human disturbances of the existing order of things, cannot help being retroactive in some sense. The uncertain line between permissible and non-permissible retroactivity has been variously drawn in respect to statutes, but no consistent attempt to limit undue retroactivity has been made in respect to judicial decisions. The criticism with which we are dealing now is thus only too well founded. And it is not hard to discover the reason for the neglect of the problem, and for the unhesitatingly retroactive application of judge-made law. The reason obviously lies in the legal fiction of the law-finding nature of judicial activity. Since judges are not supposed to make law, either old or new, the newly discovered law is presumed to have always been that way, whatever the prior and "erroneous" cases may have said. Hence there is no injustice in applying the law to legal relationships originated before it was revealed.

It was against this fiction that the realistic attack was directed, and today hardly anybody believes the old notion. But, once again, the necessary consequences were not drawn from the

realists' victory and, once again, it may be the task of welfare jurisprudence to do so. In full awareness of the true nature of the judicial process, courts should be able to escape the dilemma of either operating retroactive harshness or of eternalizing harmful rules. The Roman praetor made judicial law prospective to some extent, by yearly framing his *judicium dabo*, I *shall* give judgment, and there is good modern authority, domestic and foreign, for the adoption of a similar course of action in the American courts. Judges should be able to set aside a precedent for the future only, while still applying the old law to the case at hand. The explicit and informed positing of the welfare question will necessarily lead to a more responsible approach to the problem of judicial retroactivity. Instead of proceeding on the obsolete fiction of judicial lawfinding, courts may be induced to take a realistic view of the true incidence of their decisions.

13. There is, finally, the objection that in a democracy law should be made not only for the people but also by the people. Congress and state legislatures, it is held, are the expression of the will of the majority, and all judicial legislation amounts to usurpation of popular sovereignty. This argument has recently been presented with particular forcefulness on Jeffersonian authority, in connection with the problem of judicial review of the constitutionality of statutes.

For the purposes of this study it may be sufficient to answer this objection by pointing out again that, whatever the desirability and possibility of exhaustive legislation, under the present American constitutional and legislative techniques, the only alternative to a welfare jurisprudence is lawmaking by judges who do not know, or do not let people know, that they are making law. The desirability of this alternative will be discussed in the next section, but I should like to note here that welfare jurisprudence in no way attempts to deprive the legislatures of their chance to gain or retain the monopoly of lawmaking and of responsibility for the welfare of the country. If the legis-

lators really resent the judge's lawmaking they may be induced to put into practice their often voiced belief in government by law, to restrict the use of "legislation by default," and to take responsibility for the drafting of more precise statutes. All that welfare jurisprudence calls for is that where, and to the extent to which, the lawmaking process has not been exhausted by the legislature, and is being in fact completed by the courts, the latter act according to their true role and not according to a fable which would give us, instead of a real government by law, an irresponsible government in disguise.

Moreover, I doubt the basic soundness of this objection. I doubt whether the notion that the legislative monopoly of law-making is the basis of popular self-government is tenable in countries and in times which do not witness the struggle for power in which the notion originated. And it certainly remains to be seen whether, and in what sense, it could be said that American legislators, rather than American judges, are necessarily more "truly representative" of the American people and of their "general will," that is to say, of their basic trends, as distinguished from their transient attitudes.

# V

14. The Lost Paradise; 15. Pursuit of Welfare; 16. Judicial Law and Public Opinion

14. It may very well be doubted whether there is more wisdom in a man's rational activity or in his non-calculated performance, and whether "planned" composition or unconscious growth of patterns offers a greater probability of final harmony and vitality. This problem has appeared, in one or another form, in almost every field of human endeavor. There have been thinkers who viewed even language, family and society as the result of purposive, planned creation, of an explicit social contract; and others who asserted to the contrary that common economic welfare can be, nay, inevitably is, achieved by individual and uncoordinated activities, inspired by motives totally unrelated, to put it mildly,

to such an aim. Lawmaking itself, even in its legislative manifestation, has not always been conceived as a purposive act.

Indeed, courts are not the only class of lawgivers who conceal their lawgiving function under the disguise of law finding or law disclosing. Nor is it always the judges who claim to confine themselves to the mere interpretation of the legislator's will: sometimes the opposite is true. Scores of codifications, governmental and private, have been presented as mere interpretation of judicial decisions, and it does not take a realist's zeal to discover how much outright legislation these codifications contain. An even greater number of laws—some of them wholesome and necessary indeed—have been predicated on divine revelation, magic lore, absolute reason, or manifest geopolitical destiny. Romantic influences led jurists to deplore the increase of lawmaking by legislation on the ground that its wilful purposiveness impaired the spontaneity of the growth of legal institutions nourished by unconscious folkways and the *Volksgeist*. Their arguments have not been heeded by a century which has seen legislation run riot in all countries of western civilization. But this does not necessarily mean that the arguments were untenable, nor does this essay purport to prove it. I am not discussing here whether or not it is desirable to have judges who believe themselves to be either the mere voice of the law, or the expression of the popular genius for unconscious achievement of justice and welfare. My point is simply that the overwhelming majority of the leading judges of today's America do not believe it. Whether or not a judge who knows that he is a lawgiver makes better law than one who does not know it, the short answer is that today's most influential judges do know, and can hardly be persuaded of the contrary in our lifetime.

This article began with a discussion of the fundamental tenets of legal realism and of the influence they have exercised upon the judicial mind. To put it briefly, realism gave the judges a bad conscience. After having taught, or absorbed in the classroom, a belief in the creative nature of the judicial function, the

new generation of judges could hardly be expected to have forgotten, once on the bench, the canon they had taught or learned. Whether or not it is wise for the king, discovered to be naked, to continue to act as if he were wearing rich and embroidered garments, he certainly can be relied upon to possess no longer the magic virtues credited to virgin innocence. The simple fact is that, to paraphrase an already quoted dictum of Justice Jackson, leading modern judges, upon whom judicial lawmaking ultimately depends, "have no *instinct* by which to know the 'just' from the 'unjust' and *must* seek some *conscious* design for decision." It may be that mankind was happier in a state of nature, but no panegyric of its glories has ever succeeded in bringing back the lost paradise.

15. I shall discuss presently the possible advantages of a situation in which judges would just "pretend" to be mere lawfinders, while consciously acting as lawmakers. But I should not like to leave the present subject without registering some doubts about the supposed virtues of unconscious lawmaking.

In the first place, it may be remembered that the reluctance to assume the responsibility for a conscious pursuit of welfare has inhibited, for many generations, and among many peoples, the adequate development of the main, the legislative, branch of the lawmaking activity. It has prevented legislation from seeking openly "the greatest happiness of the greatest number," that is to say, from becoming a welfare legislation. It is enough to think of the deep and beneficent changes which were brought about in the field of criminal justice, when the emphasis was shifted from an algebra of proportionate retribution to the search for a penal code which would deter repetition of crimes, and reform or incapacitate criminals. This shift from an etioloical (punishment as a consequence) to a teleological (punishment as a means) criminal law has been accomplished largely by the legislatures, and represents one of the major victories of legal illuminism. But, of course, its fruits could not have been reaped if Benthamian legislation had not been supplemented by judges



quite dissimilar from those whom Bentham considered ideal. A tremendous amount of judicial and administrative ingenuity, flexibility, humanity and, not least important, awareness of purpose were and still are needed for the modernization of criminal law. But considerable progress has been made, and it is significant that this most ancient form of law has been the first to draw heavily upon the teachings of non-legal sciences—psychology, medicine, sociology—and thus approximate the ideal of a jurisprudence of welfare.

In the second place, judges have not always, even unconsciously, asked themselves the welfare question. Judges, no less than other men, dislike facing responsibilities. Lawmaking, or at least conscious and responsible lawmaking, is a painful, brain- and heart-breaking process. It is even more so when it is judicial lawmaking, lawmaking on the spot, lawgiving in the field, where you solve a legal problem by hanging a man, a mother's son. It is human, only too human, to fall back upon the alleged inevitability of results dictated by statute or precedent. Even in so-called cases of first impression, the responsibility for relating the litigated question to criteria of welfare, or for that matter to any other teleological criterion, can often be escaped through the invocation of legal symmetry, or through the adaptation of the new decision to the prevailing legal climate. But actually, of course, the judges are still left with a wide latitude of choice. Thus, with the lawfinding alibi firmly established, opportunities for real judicial arbitrariness have been offered to them by the ambiguously drawn statutes and precedents, in which a shift of emphasis could bring out a new distinction from the inextricable maze of holdings and dicta.

Some judges may have used their freedom consciously, for good or bad purposes. But I suspect that the majority, escaping the light and responsibility of full awareness, have succumbed to the temptation of dwelling in the penumbra of intellectual laziness, and of following habitual patterns of superstition and prejudice. Even when these patterns are a projection of well

defined sectional interests, dear to the judge's heart, he need not proceed in bad faith. He can act in defense of these interests honestly, his words faithfully reflecting his thoughts. The adjustment operates at an earlier stage: it is his thoughts which are shaped according to his interests. And it is in this surreptitious adjustment, in the bona fide betrayal of justice and welfare, that lies the main danger of unconscious lawmaking. It seems to me fortunate that its possibilities and extent have been impaired by the new attitude of the modern judiciary, grown aware of its role in society.

16. To proceed now to the next and somewhat analogous objection—even if judges know, should they tell the story? Should they, as the federal courts do with increasing frequency, openly and explicitly discuss the real problems involved in the cases? After all, lawgivers may know what they are doing, may pursue what they conceive to be welfare, without professing that they are lawmakers. Augurs exchanging smiles among themselves have been seen, or could have been seen, by attentive observers in many an ancient or modern temple. Even if new law has to be made today, why should judges directly predicate the changes upon welfare, instead of using, as the old wise men used to do, the persuasive symbols of judicial astrology? Is it not true that in many situations people would fare better if they were convinced that mediocre decisions reached by judges are the inevitable result of the dictates of 'The Law, produced *jure ac necessitate dictantibus*, than if they were faced with excellent decisions, avowedly grounded in the judges' freely chosen conception of welfare?

Similar objections have been advanced in other societies, with an explicitness and frequency unlikely to be encountered "in a country of free speech," to quote Holmes, "that affects to regard education and knowledge as desirable." But it should be noted that the exclusion of public opinion from the judicial lawmaking process is implicitly accepted by those who think that judicial activity, no matter how lawmaking in nature, should not be

inspired by a conscious pursuit of welfare ideals. While the lack of public discussion does not necessarily exclude the conscious pursuit of welfare on the part of the judges, the converse is not true; and those who advocate unconscious judicial law-making necessarily bar the possibility of a continuous and intelligent participation of public opinion in that important phase of lawmaking.

I shall not attempt to prove here the fundamental fallacy of this conception by taking an absolutistic, Fourth-of-July view of free speech and government by discussion. I shall not even make the claim that as long as, and to the extent to which, law-making functions are in fact left to the judges, a welfare jurisprudence is, everywhere and at all times, necessary to assure the democratic nature of the judicial process, the people's enlightened participation in the lawmaking process. I acknowledge that social reality is more complex than constitutional absolutes could make us believe. One of the manifestations of this complexity is that, throughout the history of mankind, even disinterested, unafraid and humanitarian philosophers have felt the necessity of imposing certain limitations upon their own freedom of speech. The "clear and present danger" that a full and precise manifestation of their thought would lead to its deplorable misunderstanding by the many, has often induced them to express themselves indirectly, incompletely, or even with self-contradicting ambiguity.

Therefore I do not deny that there are cases in which a man, a philosopher, a general, or a judge is under a moral, political and, if you please, constitutional duty not to say all that he thinks of the case before him. Where to draw the line between the right and duty to speak and the right and duty to remain silent is obviously a historical problem: as Leo Strauss has it, "the line of demarcation between timidity and responsibility is drawn differently in different ages." And it may very well be that open pursuit of common welfare by judges or, for that matter, by legislators may prove pernicious in some societies. But, unless

I am deeply mistaken, at this time, in this country, history has drawn the line of demarcation—and, I cannot help adding, fortunately so—in such a way that the free discussion of welfare elements involved in the adjudication of litigated issues is unquestionably within the “philosophical limits” of freedom of speech to which I have been referring. Whatever the doubts about the desirability of letting people know that judges are lawmakers, the historical fact is that today not only the judges know it, but also that part of public opinion which is seriously concerned with the administration of justice.

And what is more, today's leading judges are unwilling to conceal that knowledge from the people. Some of them may hesitate to go on telling a discredited tale and to behave as if no one knew their priestly secrets. Others would refuse to act as depositories of a divine revelation even if their oracular wisdom were not doubted. On the one hand, realistic analysis of the judicial function has informed public opinion, or at least, legal public opinion, and thus has exercised a pressure upon the judges. On the other hand, the force of public opinion is being called into play by the judges themselves: vacancies in the federal and state judiciaries have been increasingly filled by exoteric believers in direct and outspoken discussion of the real issues presented by the cases, rather than by men with more diplomatic background or temperament. Whether or not such a close relation between the bench and public opinion is desirable, historical forces have brought it about. The failure of a comparatively recent attempt to force a summary change in the personnel of a court shows that the composition of the judiciary possesses a considerable degree of stability in this country. It seems futile to attempt a return to the esoteric solemnities of the past.

The responsibility of our time with respect to the judiciary is similar to that accepted and fulfilled by the Century of Enlightenment with respect to the executive and legislative powers. We know already that judges do not sit *par grâce de Dieu*. But a far more enlightened and informed mutual action between

people and judges is necessary to make them really sit *par volonté de la nation*. The result cannot be brought about by the courts alone. Jurisprudence of welfare is in no sense an exclusively judicial affair. It requires action on the part of lawyers, philosophers, social scientists and educators, who must expound the courts to the public, and guide public opinion's influence upon the courts.

## VI

17. Welfare, an Ambiguous Concept; 18. The Area of Agreement;  
19. Vice's Tribute to Virtue; 20. The Tyranny of Experts

17. Most men are against sin, and it may be doubted whether the difficulties of the judicial process would be eased if all judges joined in the maxim, "if it isn't welfare, I am against it." In other words, does not the case for a welfare jurisprudence beg the main and perhaps the only real issue, by failing to define welfare? Even more, does it not proceed on the unwarranted assumption that there is such a thing as common welfare, the welfare of the community as a whole? Does not the reality of our political and social processes consist in a struggle among the irreconcilably conflicting interests of various groups?

What is more, these interests, it is often contended, are as incommensurable in theory as they are conflicting in practice. Pareto has already remarked that interests of different groups or individuals cannot be "weighed" or "balanced" with any degree of objectivity, and more recently F. C. Benham and L. Robbins have led the attack against the welfare economists by insisting that there is no way of comparing the satisfactions of different people and no means of testing their relative magnitude. In a very recent case Judge Learned Hand has sounded the same skeptical note, and also has given, with his usual incisiveness, the general reason for the reluctance of some courts to adopt the welfare approach, or at least to do so openly. "It always gives an appearance of stronger authority to a conclusion," he said, "to deduce it dialectically from conceded premises than to

confess that it involves the appraisal of conflicting interests *which are necessarily incommensurable*" (italics mine).

Bentham's attempts to present mankind with a "felicific calculus" have not succeeded in giving a solid scientific foundation to the welfare legislation which he advocated. Does the present state of social studies, relied upon by a welfare jurisprudence, promise less ambiguous formulae? Little optimism in this respect seems warranted, even if one restrict the investigation to the comparatively limited field of economic welfare. Having abandoned the hope of deciding on economic grounds what particular pattern of income distribution maximizes social welfare, even the adherents of the welfare school seem inclined to limit their contention to the proposition that measures which increase everybody's income are wholesome and desirable—a formula that does not strike one as embodying any considerable progress over Bentham's "greatest possible happiness of the greatest possible number."

These criticisms not only cannot be dismissed lightly but are quite valid in themselves—to the extent, that is to say, to which they do not purport to bar the way of action and progress. You can always embarrass a physician by asking him to define disease, health, or just the human body. It may be useful to do so from time to time. But after all, mankind, with the help of physics and chemistry, has made some non-negligible technological progress without having been able to meet the ancient philosophical challenge to define either "matter" or "force." An analogous observation may be made of the social studies, which, without having yet been able to define themselves or to make up their mind on whether they are sciences at all, have made and are daily making salutary contributions to the shape of our society.

To those who point in a number of critical cases, framed with great theoretical nicety, to the ambiguity of the guidance that any welfare concept can furnish, the main answer is that they neglect the wide area of rather plain situations where there can be little trouble on theoretical grounds, and where even less is



done by way of practical remedy. In other words, it may be true, for instance, that the insatiability of human wants makes it difficult or impossible to devise any precise test of measurement of the degree of satisfaction that increases in goods and services may secure. But the stress that economists lay upon this human insatiability can hardly be treated as a convincing demurrer to a welfare movement, jurisprudential or otherwise, aiming at a community which would provide at least for the most undisputed and elementary needs.

18. It is only realistic to admit that our society has reached at least an outward agreement on an unprecedented number of issues. To begin with, high infantile mortality, continuous malnutrition of a large percentage of the domestic population, shelter and housing conditions promotive of disease and juvenile delinquency, and even unnecessarily hazardous or degrading conditions of work, have no open advocates today. Not only that, but it is relatively safe to assume that very few people would publicly maintain today that society has no right or duty to provide for such adjustment of the income pattern as may be necessary to eliminate from its midst the crudest manifestations of these phenomena. In a society which about three quarters of a century ago fought a civil war on an openly and publicly framed issue of the ownership of human beings, this remarkable unity of expressed opinions has an importance which cannot be overlooked.

If this agreement on the elementary needs of mankind were a genuine one, the welfare movements would have a solid basis for a huge task. The vast majority of the human race is unable to purchase the bare living minimum of food and shelter. Even in the most wealthy countries, malnutrition, sub-standard housing and inferior working conditions are widespread. Their elimination looms as a sufficiently large assignment for a generation, no matter how deep the disagreement may be among economists or social philosophers on the further refinements of the welfare concept. When we are faced with the vastness of undisputed

needs, theoretical disquisitions on such questions as "whether satisfaction should be measured by what we think we need, or by what the experts tell us we ought to want," or on "the possibility of interpersonal comparisons of utility," shrink to utter insignificance for the purposes of immediate and practical action.

There may be some who will question whether the outlined issues, on which a widespread agreement was assumed, are such that normal judicial activity will have many occasions to deal with them. This doubt will probably disappear, however, if it be taken into account that modern legal institutions tend to affect an increasingly great number of people. After having digested the niceties of estates "fee tail male" or the statute *De Prerogativa Regis*, one may feel disappointed to learn that they affected a numerically negligible segment of the population while the overwhelming majority lived under servile tenure, of which so little is heard in the classroom. But modern statutes—ranging from regulation of competitive and labor standards to price, rate and wage fixing, from taxation to distribution of risks—directly affect great masses of the population, shape the very price and wage structure of the country, and influence the working and living conditions of everybody. A considerable share of judicial work centers on these statutes.

It must be noted, furthermore, that the present state of articulated public opinion in the United States is such that a considerable degree of unanimity may be found on a number of issues going much beyond the recognition of elementary needs. For instance, class or race supremacy is openly advocated only exceptionally, and hardly ever from or before the bench. There is also an equally considerable consensus, so far as manifested opinion is concerned, in regard to a minimum degree of protection due to unwary consumers and minor workers, or the rights and duties of labor. Things have changed from the days in which child labor laws or the criminal responsibility for unionization were frankly in issue.

In this sense the task of welfare jurisprudence is much less diffi-

cult than that of welfare economics. Pigou's theories, for instance, have been criticized by his fellow economists on the ground that he treated propositions based upon the assumption of equality of human beings as essentially part of economic science, while in fact such assumptions were more ethical than scientific. Lawmakers scarcely need fear a similar attack. No lawyer conceives of law as a science having the dignity or the logical aloofness of Positive Economics. Unlike its economic companion, welfare jurisprudence is on comparatively safe ground when it assumes as its end the ethical and political ideals professed by our society and attempts to find in the arsenals of judicial doctrine and social science the means for their realization.

19. It must be recognized, of course, that to a very considerable extent the agreement to which I have been referring is only skin deep. Sometimes it does not go beyond lip service. Even more often, the sincerity of the theoretical agreement is not matched by a willingness to make the personal sacrifices involved in the execution of measures necessary to remedy the deplored situation. But we must not forget that knowledge of the real conditions under which people live is only now beginning to be spread on a large scale. It has already been pointed out that jurisprudence of welfare represents a means of achieving closer cooperation between law and public opinion. The spread of this knowledge cannot fail, as time goes on, to influence the real attitude of a great many people.

In the words of a report published by the League of Nations on the eve of the present war, "to know what is necessary for the mere survival of the many should make it intolerable for the few with a relatively high standard of living to contemplate a state of affairs in which the minimum is not attained. In the absence of any higher motives the mere instinct of self preservation should oblige them to strive to make good contemporary deficiencies."

The whole problem of the degree of sincerity of the agreement reigning in a society on such or analogous issues must be dealt

with realistically. It would be dangerous, indeed, to build a policy on popular lip service, treating it as solid rock. But it would be equally unrealistic to neglect its immense social value. The French say that hypocrisy is a tribute that vice pays to virtue, and it may be added that it is often a rather heavy tribute. Social progress would be frustrated if we were not able to utilize people's reluctance to appear in their worst light. Nor is it sure that the real personality of a man, a group or a people is better revealed by their secret thoughts than by the discipline that their own words impose upon them to a greater or lesser degree. More often than it is repudiated, moral responsibility is avoided, by disguising the real issues involved. The educational and civic function of a welfare jurisprudence consists precisely in its presenting issues squarely, and at points which the drafting technique of our statutes and the judicentric structure of our legal system have made crucial.

20. Finally there is, thank goodness, an area of disagreement, genuine and frank disagreement—disagreement on ends, and disagreement on means. Far from being the field to which welfare jurisprudence does not apply, the area is one in which its endeavors are particularly needed. No matter how much we may hate to admit it, a court faced with an issue on which society frankly disagrees, and on which the legislature has given no unambiguous guidance, cannot but side with one of the contending factions. The only question is whether it will do so by commission or by omission—that is, whether or not judges will discuss in their opinions the arguments in favor of and against the real issues which underly the litigation and on which society has split. They may do it, or they may avoid it by several means. Thus they may discuss canons of legislative construction; or deny their own jurisdiction, this being “the easiest way to impress the disappointed litigant with the fact that it is the law, not the judge that refuses to hear him”; or leave the solution of the question to an administrative agency.

An enlightened welfare jurisprudence providing the judge

with intelligible findings reached by the social studies, and keeping him in contact with an informed public opinion, would enable the courts to weigh the conflict before them intelligently, to state their reasons, and to *adjudge* the conflict, thus truly performing the function entrusted to them. I have already discussed the advantages of conscious and articulate judicial lawmaking. It suffices here to make the point that such lawmaking is in no way confined to the area in which society has already reached an agreement on welfare. On the contrary, jurisprudence of welfare is itself one of the most powerful means for the research, refinement and development of the welfare concept.

Apprehensions may be voiced, however, as to the role of social scientists in this development. It may be feared that their growing intimacy with and influence upon the judicial process will result in a managerial paternalism, or in an outright dictatorship of technicians. Whatever the real degree of this danger, it is enough to say here that, if it exists, it has not originated with the beginnings of a welfare jurisprudence, and that it would find in the development of an informed judicial review its most powerful antidote.

The drafting of economists, sociologists and psychologists to the national and state capitals did not start with the war, and will not end with it. We cannot turn back the clock. Social scientists are with us for good, and are going to remain in the very midst of government. It is true that some experts, or some specialized agencies or even a specialized court, may develop a new father complex, beaming the eternal human quest for objective certainty on the power of technicians. To prevent this result is one of the main tasks of an intelligent judicial review. Judges may and should become acquainted with the various non-legal disciplines. But because of the variety of these disciplines, and of the variety of their judicial tasks, they will always remain intelligent *laymen*, as far as these disciplines are concerned. And intelligent lay control of technical admin-

istrative activity seems the best defense against the tyranny of experts.

A judge should know more about social studies precisely in order to acquire the conviction that they can furnish no more certainty than constitutions, statutes or precedents. In their quest for unerring guidance men have tried many *ductores errantium*, but never successfully. It would be unreasonable and unfair to their authors to expect that doctrines of imperfect competition or social change or the learning theory will succeed where Aristotle, the Roman law and Karl Marx have failed. A better knowledge of social sciences will enable judges to use their findings without abdicating the responsibility of the final choice of policy, which must rest with lay society represented by its lawmakers.

Jurisprudence of welfare is thus no lawyer's farewell to arms. It is one thing to recognize that law is too serious a business to be left to lawyers, and that even if there are legal problems there are no strictly legal answers to them. It is quite another to pretend to solve problems by saying, "It's simple, it is somebody else's business." Economists, for instance, are tempted at times to pass on their own questions to sociologists, psychologists, physicians, moral philosophers and even to lawyers. The passing of responsibility from lawyers to economists may easily degenerate into a vicious circle. What is more, a lawyer's unconditional surrender to social sciences would betray the essential relation between law and welfare, which I tried to show in discussing law as welfare's foundation.

Without giving any kind of scientific certainty, welfare jurisprudence cannot fail to infuse a greater degree of precision in the answers to legal problems than we possess now. "How far short this degree of perfection may be of the conceivable point of perfection?" was Bentham's question, quoted in Wesley Mitchell's discussion of the felicific calculus. And Bentham's answer, given to defend a welfare legislation, seems equally to support a welfare jurisprudence he had opposed: ". . . at



any rate, in every rational and candid eye, unspeakable will be the advantage it will have, over every form of argumentation in which every idea is afloat, no degree of precision being ever attained, because none is ever so much as aimed at."

Jurisprudence of welfare is no answer to the problems of our time. In fact, it is no answer at all, but rather a mode of inquiry. It is an invitation to learn, a suggestion as to how questions should be asked, a call for the growth of a systematic participation of the judiciary—burdened with responsibility and stripped of its pontifical robes—in the travail of society. Jurisprudence of welfare is no easy solution of legal and social problems. It is the assignment of a grave task, whose very formulation would have been impossible without the encouragement flowing from the new attitude of our present courts. To be sure, it is the rejection of an issueless life and of an issueless jurisprudence. But it is not an attempt to impose a given concept of life or to present a given answer to the issues before us. We know too well that no new world can be discovered by mapping it in advance, or proving its existence beforehand. What is more, one may not even suspect its existence, and having discovered the continent of new welfare, may die believing that it was only the old continent of wealth, the fabulous Indies.

Purposiveness is not advance planning of the results to be reached. It is the will to discover, the will to enlarge the tiny segment of the world we know, the will to learn and to do better, the firm and deep-seated conviction that men may, again and again, in everyone's lifetime, see

" . . . thin with distance, thin but dead ahead,  
The line of unimaginable coasts."

# A MIDWESTERN SECTARIAN COMMUNITY<sup>1</sup>

BY H. H. GERTH

MORTON, a suburb of Peoria, Illinois, is a multiple-industry community and an agricultural service center. It withstood the depression relatively successfully, and since the 1930's it has grown rapidly, surpassing neighboring rural communities. Approximately two-thirds of its 2,300 inhabitants belong to two sects: the Mennonites and the "Apostolic Christian Church." The present study is concerned primarily with the latter organization, and with its influence on the social structure and social psychology of the community.

Despite its name the Apostolic Christian Church is best designated as a sect, because it conforms to the characteristics of a sect as defined by Max Weber and Ernst Troeltsch, and widely accepted by others. It is a voluntary association of adults who successfully claim qualifications for a "sanctified life." Whereas churches accept children for membership, through infant baptism, and thereby extend sacramental benefits to the pious and the less pious alike, and exercise jurisdictional authority over both, this sect admits only adults who through conversion experience and deportment prove themselves worthy of belonging to a sanctified following of Christ. Instead of "hireling" clergymen it has a lay ministry elected for life.

In this country the Apostolic Christian Church is a small rural sect of approximately 6,000 members. Over half of the members are settled in Illinois and Indiana, where they constitute 17 local congregations. The rest of the members are organized into 40 local

<sup>1</sup> This paper was read before the Spring 1942 meeting of the Midwestern Sociological Society. It is a preliminary report of a more comprehensive community study. The author wishes to express his gratitude to the Graduate School of the University of Illinois, for a research grant, and to Professor E. T. Hiller, University of Illinois, for his personal interest and inestimable assistance.

units diffused over 14 states from New York to California. Among the local units the Morton congregation, with about 700 members, is the largest, and west of the Mississippi the congregations become progressively smaller. The sect constitutes a loose confederation of autonomous congregations, with unanimity of purpose established by visits between ministers and members and by occasional conferences of ministers.

The Apostolic Christian Church traces itself to the evangelistic activities of Samuel Froehlich, a Swiss candidate of theology who was expelled from office during the pietist revival of the 1830's. During his migrations he visited in Mennonite and Old Order Amish peasant communities and found disciples among journeymen workers. Thus the origin of the Apostolic Christian Church follows what has been characteristic of sects since Christ's prophecy: a charismatically inspired leader finds followers believing in his interpretation of deity and in his exemplary conduct. Froehlich's mission spread through the traditionally Mennonite and sectarian areas adjacent to the upper Rhine valley.

With the suppression of these emergent sectarian organizations by authorities of church and state, the members emigrated to this country, the first immigrants arriving in the 1840's. Morton's population was increased through such immigration until as late as the 1920's; today 12 percent of its inhabitants are German-born, while the descendants of foreign-born or mixed parents amount to 35 percent.

The creed of the Apostolic Christian Church is close to other sectarian beliefs of puritan or pietistic background, such as those of the various Mennonite sects, the Amish, the Dunkers and others, all of them going back to the Dortrecht Confession of 1632. The elements of this creed may be summarized under two statements of belief: first, all men are equally wicked, by virtue of inscrutable predestination through an omnipotent and omniscient God; second, opportunities for salvation of the soul are unequally distributed according to the abilities of individuals to find the narrow path of truth.

According to the creed of the Apostolic Christian Church, which belongs to the tradition of continental pietism rather than English puritanism, salvation is dependent upon a protracted *Busskampf*, a period of penitence during which the individual soul, through self-searching introspection, methodically scrutinizes the workings of the personalized devil. The devil is believed to ensnare the soul in wicked worldliness—wickedness being the internalized reflection of the seductive stimuli of the “world.” This self-scrutiny is expected to be intensified after the completion of formal education. The period of penitence is completed through specific experience of conversion and of regeneration. Since not all persons qualify equally for spiritual gifts, and since not all are believed to strive equally for the state of grace, six ministers, elected for life, represent the aspirations of the congregation and must attest to the state of grace attained by the aspirant before full membership privileges can be extended.

A distinction is made between half-members and full members. The ministers address full members as “beloved brethren and sisters,” and half-members as “friends of truth.” Only full members of the same sex greet one another with a kiss of brotherliness before services. Half-members are excluded from full sacramental privileges and from the foot-washing ceremony and the Lord’s Supper; they are barred also from the council of members, a practice in line with the precept that “Many are called but few are chosen.” But half-members are admitted to ordinary services, and to the regular Sunday meal of the religious assembly. They may expect the aid of brethren in case of personal or economic distress if the cause of that distress is an “act of God”; they are entitled to funeral services and to burial in the sect’s cemeteries. Half-members are expected to conform to the moral and religious conduct codes as conventionally enforced by the members and jurisdictionally guaranteed by the ministers.

Controls range from brotherly admonitions of the ministers, exclusion from services and withholding of cure of soul at time of illness or death, to the practice of “shunning”—a formal boycott

invoked by all members of the sect. An otherwise kindly old woman advised the author not to speak or listen to a ten-year old girl, who was believed to be wicked because she had "swiped" a schoolmate's pen. That was informal shunning. In 1900 a case of shunning gained notoriety because the shunned member, a farmer, having been completely ostracized for five years, killed his wife and children and later himself. His sins included an undue fondness for his children, in other words, the sin of idolatry, which contradicts the mores of the patriarchal family. In 1909 a shunned member received damages of \$1,000 after filing against some of the local ministers a charge of conspiracy. Since that time no case of shunning has occurred, to my knowledge. There have been minor schismatic splits, but the sect seems to have maintained group unity; this it has done not by enforcing the old rules with increasing strictness, but by compromising with worldly things.

Dogmatic interpretation does not play a significant role for the ministry. The service emphasizes personal traits guaranteeing meritorious conduct, and thus religious symbols, such as the cross and the pulpit, paintings and the organ, are conspicuously absent, and ministers don no official dress. Plainness is likewise evident in the cemeteries, with their small uniform tombstones bearing only names, and dates of birth and death. Magical speech formulae, swearing and oaths are alike tabu, in accordance with the Biblical admonition, "Let your communication be Yea, yea; Nay, nay." All communication and behavior must be utilitarian and purpose—rational. The only literature is the Bible, as the fundamental code of ethical and religious conduct, the hymnbook and an occasional mimeographed sermon. Secular art is suspect as idolatry. All non-utilitarian activities, being unrelated to the salvation of the soul, are suppressed by statutory regulation. Participation in sports is denied the believer, with the exception of bowling which, like baseball among Old Order Amish believers, is regarded as recreational exercise of the body. Photographs of members are not permitted, although those of objects, landscapes, non-members and children are allowed. Posing for photographs

and possession of graven images is regarded as idolatrous. Thus the pious member must withdraw from many activities and forfeit tastes developed in adolescence.

The struggle of penitence consists in just this withdrawal from the mundane. And the period of penitence involves a crisis in self-esteem because of the new and strict demands to be incorporated in the ego. Former pursuits must be devalued in terms of the new role and status goal: sect membership. Introspection and self-searching function in the formation of a new ego ideal and a new image of the self, and in service to that image the former relatively undisciplined ego is attacked, humiliated and submerged. Rigid self-discipline controls overt action and all emotional responses. Uncontrolled manifestation of emotional life is suspect, and the self-disciplinary code counteracts such irrational responses. The range of facial expression is controlled in the direction of a dignified impassivity, a well-tempered serenity modified only by a joyous gleam of the eye or a shamefaced tear of grief. Thus a general asceticist code of propriety is religiously sanctioned, and specific psychic responses are demanded. Aggression is approved only if directed against external objects or against inroads of worldliness within the group—and then only if it takes the manipulative form of “loving concern.”

Mutual suspicion is facilitated, because of the all-pervasive neighborhood control and because of gossip, which easily carries religious consequences. Anxiety becomes manifest in a tendency toward perfectionism: never to expose oneself to blame, always punctiliously to control one's conduct, fulfil one's obligations and duties, and adhere to the norms of sanctified living—all these become the preconditions for self-esteem. In such a situation the maintenance of self-esteem is the core of social control.

Some of the most eminent families of the group failed to educate their children for sect life. Unless they were disinherited and left the community permanently, or were personally not successful, the interstitial individuals who did not join the sect had the opportunity to mediate between the latter and the non-sectarian



Main Street families of the Community Church and the Civic Clubs. The latter group claims political and civic leadership but needs the acquiescence and support of the sectarian groups. These marginal individuals work out reasonably acceptable compromises, and hence qualify for leadership. In this peripheral group are the president of the County Farm Bureau, the town's mayor, and a manufacturer, one of the most influential civic leaders. The latter is active in the American Legion, the Optimist Club, the Freemasons and the Republican party. To bring a motion picture theater to Morton in 1937 required all the manipulative and persuasive skill of the mayor, who succeeded in what had been tried repeatedly since 1909.

What religiously is a loss to the Apostolic Christian sect may be politically beneficial to them. Thus whereas the cases of shunning before World War I brought court actions and scandal, with resultant damaging publicity, a case of infanticide in the late thirties could be fixed up and completely suppressed. Even after this the repentant sinner was accepted for sect membership.

The asceticism of the sect does not lead, however, to an escapist withdrawal from the world. The sect member has only one way of proving to the members, and thereby to himself, his state of grace. He must remain in his calling. Through the successful performance of occupational tasks that the world demands of him he can assert his "state of grace." The connection which Max Weber pointed out between asceticism and success in work as a sign of grace survives here in an increasingly secularized context.

The effect of this emphasis on occupational success is to stimulate the commercial and industrial initiative of the Morton-born sect members, and it seems significant that, apart from corporation branches which have come to Morton recently, all major business establishments have been founded by Apostolic Christian sect members. During the 1870's two brick and tile works were founded; at the beginning of this century a member invented a process for manufacturing interlocking wire fence, and he sold his plant and patents to two other Apostolic Christian families

whose heirs are today in control of the industry. Three brothers of this family married three daughters of another industrial family, and there are blood relationships with still another. These industrial families are a great asset to the sect, for members may expect preferential employment in this little job empire that is interlocked through kinship and religious ties of the owner-manager families.

The owners, in turn, can recruit sectarian laborers who, with their pietist faith and rural and small-town background, are frugal, industrious and comparatively cheap. Moreover, they are residentially stable, acquiescent in a paternalistic plant management, and religiously prevented from joining trade unions or following their demands and bargaining techniques. It seems symptomatic that out of the hundreds of employees in the foundry of a large tractor company of East Peoria the most stable worker is a member of the Apostolic Christian sect. He has remained in the same job for fourteen years, and takes pride in the fact. Similarly, there are moulders, claymixers and potters who have worked for forty years or more in Morton plants.

The manufacturers operate their plants somewhat like enlarged family enterprises, employing their family members in all skills, celebrating Christmas with their employees and finding the brotherly help of the sect members in emergencies. This sectarian mutual aid and the kinship relations provide for a kind of informal insurance between related firms, between managerial staff and employees, between the owners and non-owners. The sect provides generous help in tornadoes and other such emergencies, and it cares for its own poor, allowing them the use of certain sect property rent free.

The prosperous farmers are interrelated with the manufacturers. Through thriftiness and diligence Apostolic Christian sect members, and also Mennonites, identifiable by their Germanic names, have climbed the agricultural ladder and displaced the previous landowners. In 1873 the German families held about 30 percent of all farmland in Morton township, but by 1939 their holdings

amounted to 80 percent. Among the seventeen largest landholding families, owning roughly 40 percent of all land in farms, there were six Germanic names in 1873 and fourteen in 1935.

The closely knit communalization of the sect does not result only, or even primarily, from the method of selection for membership as discussed above; it results also from changes in the sect during recent decades. Sects emerge through the organization of a prophet's disciples and their followers. During the phase of spiritual exaltation, and of breaking away from "worldly" things in the name of the prophet, there is a genuinely charismatic leadership situation. The converts follow the prophet because they believe in his extraordinary qualifications. The leader legitimizes his claims for leadership through his prophecy. This period of exaltation is followed, however, by a routinization of organizational practices, the determination of successorship, the definition of rules in conformity with the founder's intentions.

This process of routinization may follow along the lines of rational organization, with an emergence of a group of professional leaders, experts in the interpretation of the leader's example and of divinity; the organization may be "rationalized" by lowering the age level of baptism, by professionalizing the staff, by gradually transforming the sect into what Howard Becker has called a "denomination," and onward through infant baptism and priestly office toward a "church." Or, along a quite different line, the routinization of the sect organization may follow the course of traditionalization, as has occurred among the Quakers, the Old Order Amish and many Mennonite sects, who after centuries show no beginnings of church organization and have nevertheless routinized their originally charismatic practices into traditions.

The Apostolic Christian Church followed the second course. Technically the sect remains a sect. The ministry remains a lay ministry. The age level of candidates for baptism has risen, in accommodation to the secular school society. But the charismatic exaltation has gone. The dominant propertied groups do not anticipate judgment day here and now, and the prayers, sermons

and songs reveal the monotonous routine of uninspired correctness and punctilio. Holy tradition, rather than charismatic inspiration, is the rule. This is maintained by the ministry, which constitutes a council of elders, all related with their predecessors' families. They form a genuine gerontocracy, and it is consistent with their advanced age, and with the diminishing attraction of the sect for youth, that great emphasis is laid upon piety of children for their parents, on obedience and respect of youth toward old age, and that there is much bewailing of the sinful state of present-day youth.

One of the cardinal principles of the sect is the religious emphasis on endogamous marriage. Thus the Morton unit of the sect constitutes, in effect, a religious organization of large families with identical names. The large family reunions in the summer months, with 200 to 300 persons attending, the interest in genealogy, and the constant conversational tracing of kinship relations, reveal the sect as one large "cousinhood." As one member remarked, "In reality there are only two families living here in Morton." He referred to the Apostolic Christian group and the rival Mennonite group. He did not count the few peripheral stable families outside of the sect, the newly settled unrelated commuters to Peoria, or the mobile families of Main Street storekeepers and tavern owners.

Max Weber identified the Protestant sect with the promotion of individualism, and with the devaluation of kinship loyalties in favor of sect loyalties. This may hold for the charismatic phase, but it does not hold at present for the Apostolic Christian Church, or for the Mennonite sects. Today these survivals of the heroic period of sectarian Protestantism constitute religiously sanctioned kinship organizations which do not foster the "capitalist spirit" of rational competition, initiative and enterprise but provide a shelter of belongingness, personal warmth and mutual aid for sections of the economically threatened small-town and rural middle classes.

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## WHY "NORMALCY" FAILED<sup>1</sup>

THE war has now reached a stage in which all eyes are on the peace to come. Planning for postwar readjustment is well advanced, in both public and private circles. Many are now asking the questions: Are we going to repeat the same mistakes we made in 1919-20? Are we due for another "Return to Normalcy"?

The general failure of Woodrow Wilson to carry through a successful, unified demobilization program is well known. But the specific issues on which the administration and Congress foundered are little known. Since these same problems will confront our political, business and labor leadership after this war, it is highly important that we understand the contradictions in policy after World War I and prepare to deal with them.

The first important confusion in policy came over the course of peacetime prices. When, within two months after the armistice, business and consumer buying slumped in expectation of a precipitous price decline which did not come, two conflicting views were adopted in the governmental attack on the problem. The Council of National Defense and the Department of Labor maintained that prices had reached a permanently high level, and that any further holding off of buying would needlessly aggravate an already grave situation. Their policy, therefore, was to urge a nationwide "Buy Now" campaign to revive business and to keep government surpluses off the market lest they break prices.

The Department of Commerce, on the other hand, took the position that prices were bound to fall, although not to the prewar level, and that a resumption of buying on a large scale could not be expected until a rock-bottom level of prices had been reached. Rather than waiting for slow and painful readjustment to bring about the needed reduction through natural forces, the Department of Commerce set up the Industrial Board, for the purpose of achieving, through voluntary cooperation with business, one big markdown in prices that would bring about a renewal of buying and dispel the gathering clouds of industrial crisis. Obviously these two policies, working at cross purposes, tended to offset each other's value, until finally the process of inflation took the problem out of the hands of both groups.

The "Buy Now" philosophy was directly in conflict also with the

<sup>1</sup> This paper is based on a study of demobilization to be published by the American Council on Public Affairs.

"Work and Save" policy of the Treasury Department. The latter, anxious about the success of the last Victory Loan, mindful of the need for greatly increased saving to absorb the government securities still being carried by the banks of the country, and concerned about financing the large export surpluses necessary for the rehabilitation of Europe, was continually attempting to encourage saving. The Treasury saw no occasion for a relaxation of thrift and saving habits with the return of peace; in fact, it created a special Savings Division to perpetuate the savings philosophy among the American people. How important a factor the Council of National Defense and Department of Labor "Buy Now" propaganda was in stimulating the reckless buying spree that took hold of the public during the latter half of 1919 and early 1920 is hard to say, but there is no question that it tended to undermine the thrift campaign of the Treasury Department, and thereby to weaken governmental efforts to curb postwar inflation.

In another area, the administration reversed itself several times on the antitrust issue. The whole tenor of Woodrow Wilson's message on December 2, 1918, was that the forces of competition would be relied on to carry the country through the readjustment period. Accordingly, price-fixing agreements were quickly terminated, and on January 1 Attorney General Thomas W. Gregory reminded the country that the antitrust laws were still in effect. Yet within little more than a month, when unemployment was mounting, a movement was launched under the auspices of the Department of Commerce, through the Industrial Board, which completely ignored the antitrust laws and was in fact, by written opinion of the Attorney General, in violation of them. Within a few months after the demise of the Industrial Board, in August 1919, the government was again prosecuting violators of the antitrust laws in its attack on the high cost of living. Such a record indicated a sad lack of a consistent, integrated demobilization policy.

The government also found itself in an embarrassing position on the public works issue. The Department of Labor was urging a large public works program to take up the slack in employment; the Department of Interior had prepared elaborate plans for soldier land settlement, to provide jobs for returning soldiers; and in early March 1919 President Wilson called a conference of governors and mayors to get a big public works program under way. But to his great dismay Wilson found that the Railroad Administration had not yet removed a prohibitory freight rate that had been put on building materials during the war to stop all non-essential construction. Moreover, with the failure of the Republican Congress to grant any public works



appropriations, the federal government was placed in the unenviable role of advocating to lesser political subdivisions and private citizens a policy that it was itself not willing to adopt.

Another important inconsistency was the discrepancy between the Federal Reserve Banks' rediscount policy and the government's high cost of living policy. On the one hand, the government was desperate in its attempt to reduce the rising price level. Yet at the same time, by maintaining artificially low rediscount rates to permit federal financing at low interest rates, sound bank policy was subordinated to Treasury interests. The failure to place a check on further credit expansion and speculation neutralized the government's attack on the high price level.

Still a further contradiction that ran through most of the public and private political thinking of the time had to do with the question of production. Particularly after the high cost of living problem became acute in August 1919, one of the foremost remedies proposed was that farmers and especially workers should renounce all artificial restrictions on production. Many advocated this policy as the only possible way of lowering the cost of production and increasing the volume of consumption goods.

Few proposals were ever made, however, except in the labor and farm press, suggesting that corporations also stop restricting production and produce an abundance for all. To raise this issue meant to venture on very shaky ground, because such proposals involved the right of private property to do as it pleased; and any suggestion that property be limited or regulated in some manner was immediately labeled as Bolshevistic. But in terms of cold economic analysis, the increased productivity to be expected from workers and farmers, even if they removed all restrictions on output, would have been only a drop in the bucket compared to the increased productivity that could have been attained if techniques for maintaining full employment of business resources had been developed. Moreover, several feasible plans were proposed to achieve full employment without serious alteration in the system of free enterprise. The significant point, however, is the fact that there was great confusion in the thinking and policies of the government in respect to achieving maximum production.

But most fundamental of all the inconsistencies running throughout the transition period was the unresolved conflict between the natural-forces or free-market philosophy and the theory of human control. President Wilson enunciated an unqualified faith in the natural forces of supply and demand in his December 2 message, yet

when crises arose in the readjustment period he repudiated his laissez faire policy. Rather than leave economic processes to the working of supply and demand in a period of crisis, when the reestablishment of equilibrium in the market was absolutely essential, Wilson adopted policies, for example in the Industrial Board and his drive against the high cost of living, which indicated a basic belief in the ability of human planning to affect and control economic welfare.

It was this constant vacillation between a do-nothing and a do-something policy that robbed the economy of the full benefits that might have been derived from either one consistently followed, and placed on the economy all the disadvantages of half-way measures in each direction.

The loyalty to contradictory philosophies was found not only in the high offices of government but also in the rank and file of businessmen and the public. On the whole, a policy of laissez faire fitted well the traditions and beliefs of the people. Government still governed best when it governed least. Yet both buyers and sellers, both producers and consumers, were unwilling to accept the practical workings of that philosophy. When a time of test came for the functioning of natural forces, there was an almost universal withholding of production and buying, while everyone waited in suspense to see what the price level would do. The automatic forces of supply and demand failed to work. If one single contradiction stands out above all others in the demobilization period, it was this failure of the people and the government leaders to clarify their attitudes on the issue of natural forces versus planned control and to adopt a consistent course of action on whichever philosophy they chose.

When peace comes to us after the present war, the unresolved conflicts of 1919 will return to plague us. We can stumble into demobilization, each arm of the government following its own policy, unmindful of what the other arm is doing and unresponsive to the needs of the total situation. This course will almost certainly lead to confusion and disaster. Or we can turn to postwar readjustment with a clear-sighted understanding of the problems ahead and a unified system of planning adequate to carry us through the storms of transition. The choice lies before us.

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## COMMENTS ON "CAPITAL IS MADE AT HOME"<sup>1</sup>

PROFESSOR HAHN has certainly performed a service for the economically interested public in pointing out the ease with which the poorer industrial nations can expand their output of capital goods, and thereby increase the stock of productive equipment available to them, without needing financial help from wealthier nations to an amount equal to the value of the additional output. It seems to me, however, that he has gone much too far in minimizing the significance of capital imports for full employment in the poorer countries, and that in doing so he has created misunderstandings at least as important as those he intended to dispel. It is to remove these misunderstandings of international economic relations that the following note is designed.

I do not wish to deny the political significance of German industrial reconstruction in the 1920's, which Professor Hahn properly emphasizes in the latter part of his article. Nevertheless, the fact that the reconstruction of German heavy industries was used to prepare for war, after the downfall of the republic, has no bearing on the question how far the formation of capital and the maintenance of a high level of employment, in the years preceding that downfall, were dependent upon capital imports in general. Nor is there, in this respect, any significance in the fraudulent measures by which Hitler Germany got rid of the private debt that arose from foreign investment during the '20's.

The following sentences (p. 256) seem to summarize the theoretical content of Professor Hahn's article: "Modern highly industrialized countries seem to be capital autarchies, that is, they make their capital at home. And they are able to do so because their economic systems are elastic with respect to their productive and their credit-creating capacity. They are no longer either Robinson Crusoe's island or colonies of the nineteenth century, from which many people even today derive their conception of capital production."

The simplest way to show the fallacy of such a sweeping generalization is to consider a realistic example—a country which, like England or Germany, has to import a significant amount of raw materials for its industrial output and a significant part of the food by which its

<sup>1</sup> L. Albert Hahn, "Capital is Made at Home," in *Social Research*, vol. 11 (May 1944) pp. 242-58.

population is maintained. Let us assume that in such a country the production of capital goods—iron, steel, machinery, factory buildings and the like—rises considerably. Let us further assume, for the sake of simplicity, that the additional income derived from the additional output is completely spent, that is, devoted to the purchase of more consumer goods. Since the additional goods that are produced do not belong to the category of consumption goods, what will be the effect of this additional demand? There are four possible answers.<sup>2</sup>

First, it might be that no more consumables are made available and that therefore the price level of consumables rises in proportion to the increase in demand. In a democratic society, however, this situation is likely to be followed by claims for wage increases commensurate with the rise in the cost of living, and thus by a cumulative and inflationary spiral. It can therefore be disregarded.

A second possibility, which may also be ruled out, is that the domestic output of consumables is increased. If this occurred, the producers of these additional consumer goods would, according to our present assumptions, effectuate an additional demand for consumer goods exactly equal to the additional output; consequently nothing would be left to satisfy the additional demand for consumables with which our problem started.

Third, capital might be imported from abroad for the purchase of the new capital goods, which are put into operation as functioning units in the country producing them, even though the title to the new investment is in the hands of a foreigner. In the trade balance the imported capital would take the form of more imports of raw materials and, in particular, of consumables. Therefore we would ultimately have an exchange of capital goods produced at home for raw materials and consumables imported from abroad.

The final possibility is that the additional capital goods produced are exported, thus making it possible to pay for additional imports of consumables, and of raw materials so far as necessary. This process obviously requires an increase of investment or "capital formation" abroad. Like the third possibility, above, it militates against the unqualified thesis that "capital is made at home"; and, in addition, it creates particular difficulties for the countries producing the additional capital goods, because they will find the competitive situation abroad much less favorable for capital goods than the competitive situation in the home market. It is of some interest to note that

<sup>2</sup> We may rule out the depletion of stocks of consumables, because this would be only a temporary way out.

by the end of 1928, on account of the decline of capital imports into Germany, the exports of capital goods from Germany increased, maintaining employment at a tolerable level for some time, but that this expedient did not prove feasible very long.<sup>3</sup>

The assumption made in the preceding paragraphs, that none of the additional income is saved, represents of course an oversimplification, but it is not a very important one because the argument is equally valid if we allow for some amount of savings—provided only that total savings in the country are not increased to the same extent as the cost value of the capital goods output. It is true, too, that a totalitarian government can solve the problem by reducing consumption all around, as the Hitler government did after 1933. But statistical series taken from the operations of the Hitler government after 1933 prove nothing for a system in which people are not told how much to save or how to spend, and in which a certain historically obtained standard of living must be maintained for the major part of the population. Capital can always be made at home if we can impose an equal amount of savings on the population by force. Therefore I agree with Professor Hahn that after the war there will be very little need for capital imports into Germany, provided the occupation authorities keep the standard of living at approximately its present level—because the excess of national income over consumption will suffice for the necessary formation of capital. It does not follow that the same thing is true for a country like England, which must either increase very considerably the efficiency of its production—and therefore its ability to compete in the world market—or import capital to reconstruct its industries.

The quantitative significance that capital imports have for the maintenance of employment can best be seen if we analyze the German balance of payments in the particular years in which the reconstruction of German industry was carried through. In the accompanying table the sum of the figures in columns 2 and 4 equals, for each year, the capital imported into Germany; the difference between column 2 and column 3 equals the amount of net interest payments and reparation payments to be made by Germany.

The table shows, first, that to finance the import surplus of commodities and services (column 3) capital imports were necessary; only in the year 1927 was a small fraction of the import surplus

<sup>3</sup> A more detailed description of these international interrelationships was given by the present writer in his book on *Some International Aspects of the Business Cycle* (Philadelphia 1936).

## ITEMS IN THE GERMAN BALANCE OF PAYMENTS, 1925-28

<i>Year</i>	<i>Net Excess <sup>a</sup> of Current Items</i>	<i>Net Excess <sup>a</sup> of Commodities &amp; Services Imported</i>	<i>Net Gold Imports <sup>a</sup></i>
1925	3,045	1,982	96
1926	85	-1,279	568
1927	4,377	3,452	-452
1928	3,367	805	931

<sup>a</sup> Debits minus credits.

financed by gold export—an export that was smaller, however, than the total gold import in the two preceding years. Second, it will be noticed that in three of these four years the capital imports which helped finance the imports of raw materials and food were considerable; it may be estimated that a raw material import of, say, 400 million marks, financed in this way, determined the employment of a million workers. Third, in 1926, the one year in which imports of commodities and services were not facilitated by capital imports, Germany had a severe depression and sharply rising unemployment. And finally, the significance of capital imports is not adequately measured by looking only at column 3; the difference between column 2 and column 3 is important. The interest and reparation payments had to be made, regardless of whether or not capital was imported into Germany in the same year. Consequently, if there had been no capital imports at all, the necessity of making interest payments and reparation payments would have brought about a further increase of German unemployment, because in a democratic society it is only unemployment which, in the short run, sufficiently reduces food consumption and imports of raw materials in industrial countries of the British and German type. Since it can very well be argued that the extensive unemployment of the years 1930-32 contributed greatly to the downfall of the republic, the capital imports of the preceding years may be viewed in a somewhat different political light from that in which Professor Hahn sees them.<sup>4</sup>

<sup>4</sup> This point is amply borne out by the employment situation in 1931, when the import surplus in the German balance of trade was converted into an export surplus. In referring to this change as proof that "a small deflationary pressure on the price level . . . will, under certain conditions, suffice to reverse the trend of the trade balance" (p. 250) Professor Hahn must have completely forgotten the social and economic conditions in Germany in the year 1931.



The basic error in Professor Hahn's argument is caused by his failure to distinguish between capital goods production and "capital formation"—or, more simply, saving—as means of reducing consumption. In this respect, despite the fact that his general outlook is that of the classical economists, he has refused to follow their lead. His position is surprisingly close to the position of certain Keynesians, who have argued, in exactly the same way as Professor Hahn, that the amount of saving necessary for expanding the current rate of output is always automatically created by increasing the current rate of investment.

HANS NEISSER

## BOOK REVIEWS

STALEY, EUGENE. *World Economic Development, Effects on Advanced Industrial Countries*. Montreal: International Labour Office. 1944. v+218 pp. \$1.75.

Professor Staley's general approach to the problem that represents the main topic of his book is the classical one: in the long run the advanced industrial countries will not suffer from the industrialization processes in the rest of the world; their exports will not cease to grow, though the ratio of exports to national income is likely to decline, because the larger and the more advanced a country, the larger is the proportion of total output that is represented by the output of goods and services which by their very nature cannot enter international trade. The kind of goods that the advanced industrial countries will produce will, of course, undergo changes; they will specialize more and more in certain lines, and will exchange these specialties for the raw material and food they wish to import from countries more amply provided with them.

This development, favorable as it appears to be for all parties concerned, requires, however, a high degree of both willingness and ability to adapt the structure of industrial production to changing circumstances. Measures to promote the mobility of labor in the various countries would make a particular contribution to this goal, and it is therefore understandable that Staley comes back again and again to the problems of adaptation and promotion of mobility. He strives hard to avoid stating mere generalities, and to make as concrete as possible his discussion of both the obstacles to mobility and the promotion of adaptation, though in the reviewer's opinion he has not always succeeded in this respect.

Combined with the classical long-run approach to the problem of industrialization is the modern investment approach to the problem of full, or at least optimum, utilization of existing resources in the short run. Again Professor Staley is able to draw on what can be considered the prevailing opinion, at least among the younger economists. The advanced industrial countries cannot expect an adequate state of employment unless real investment (in the sense of production of equipment goods and increases in commodity stocks) attains a sufficiently high level; and if there is not prosperity in the advanced industrial countries, the rest of the world, as far as it is drawn into the nexus of international trade, cannot be prosperous either. Capital exports from the advanced industrial countries, especially from the

United States, and resultant commodity exports appear almost indispensable as a supplement to domestic investment activities, if the desired level of aggregate investment is to be reached. On the whole, Professor Staley's arguments in this respect cannot be disputed, at least not if one share his opinions concerning the long-run effects of world economic development on advanced industrial countries.

Professor Staley's presentation of these two main trends of thought is extremely lucid, and always characterized by the desirable mixture of theoretical clarity and economic commonsense. One can only hope that his book will be widely read also outside of professional circles, and that his basic arguments will be grasped by the public and allowed to play an important role in the thinking of the nation. The following critical remarks pertain mainly to details, and are intended not to detract from the merit of the book, but to suggest possible improvements in later editions.

First, there are some slight inconsistencies. At one place, for example, the author seems to adhere to the views of the so-called mature-economy school concerning the detrimental influence of a decline in the rate of population growth on current employment; while at another place the older Malthusian views concerning population growth are brought forward—as it seems to the reviewer with greater right. Another example: in general, Professor Staley rightly stresses that contraction of a certain industry in a certain country may be necessary in the long run, in order to work out a new international equilibrium of production and trade corresponding to the stage of world economic development obtained; nevertheless, he maintains that an artificial stimulus to the demand for the product of the industry concerned might make possible a more orderly retreat. This would be true in a planned economy, in which every step of contraction and transfer can be scheduled for a certain time, but the reviewer is unable to see that in a free enterprise system it would do anything but prolong and intensify the agony. In fact, this problem was taken up in the reparations discussion of the 1920's, when the question arose whether capital imports into the paying countries would not make more difficult, in those countries, the long-run adjustment to an increase of exports and a reduction of imports. These complex problems merit a more detailed discussion, in which it could also be made clear why capital exports usually prove so much less affected by friction than a reparations transfer. Furthermore, since Professor Staley seems inclined to regard as advisable only such foreign investments as would directly produce the foreign exchange

necessary for the debt service, he should explain why a great number of foreign investments proved successful during the nineteenth century, investments which, at the outset at least, did not satisfy this condition.

The main practical suggestion of the book concerns the establishment of an International Development Authority, which would work out a coordinated international investment program and would finance from its own funds at least parts of the program, and in this way encourage private enterprise from all over the world to participate with confidence in particular projects for development. Professor Staley realizes, of course, that the amount of funds at the disposal of such an authority would have to be small in comparison with the total annual savings capacity of the western world. But he does not attach much weight to this fact, mainly because he does not foresee a very large capital export from the advanced industrial countries (in which capital export as a means of maintaining employment is assigned only an auxiliary role), or even a high speed of the industrialization process in the outside world; the latter conclusion is derived primarily from an analysis of the Japanese industrialization process since the 1880's, and therefore is not fully convincing.

As to Professor Staley's conviction that private funds would not hesitate to come forward if the International Development Authority succeeded in working out a coordinated program, some doubts may be permitted. First of all, in the reviewer's opinion an international authority would be in no position to eliminate political influences and considerations. Quite the contrary: in order to show its impartiality it would be forced into something like a quota system of allotments, covering not only investments in the countries to be developed but also orders to be given to businesses in the various advanced countries. The board of the Authority would be composed of representatives of the various countries, and the natural tendencies toward an allotment policy would be reenforced by the formation of blocs. Secondly, a public authority of this character would have a certain tendency to concentrate on the best risks in investment, because losses might be fatal for its survival; but it is precisely the second-best and third-best risks which need to be taken care of. Thirdly, the tasks with which Professor Staley has burdened the Authority and the investment programs to be developed are much too huge.

How does one make "a rough estimate of the order of magnitude of the total amount of capital goods of all kinds which the region might be capable of absorbing and putting to good use over the next

ten years" (p. 103)? How does one estimate "the peacetime demands, aside from international development projects, which might be anticipated for the output of these industries immediately after the war and over the next five to ten years, assuming various levels of national and world income" (*ibid.*)? And not only would it be necessary to have a rough estimate of the demand and supply conditions on which the success of an investment depends, in the business sense; in addition, Professor Staley requires, as pointed out above, that the investments produce the necessary foreign exchange. The timing and direction of equipment orders is to be arranged in such a way that they can be substantially increased during a depression in the advanced countries, and likewise reduced during a boom. Finally, and not least in importance, the orders originating in the investments are to assist in easing the postwar adjustments of the various industries in the industrial countries.

On the other hand, certain very important problems of international investment are not touched on at all. We cannot reasonably assume that private long-term investment abroad will take any substantial dimensions unless some guarantee of repayment and debt service is given; from this point of view certain events in various Central American and South American countries have created a somewhat doubtful climate, to say the least. Should we not require the new international super-state organization, which in one or another form will surely develop after this war, to create a more favorable atmosphere than has existed in the past? This it could do by setting up some kind of code for international investment, and establishing "courts of equity" or "advisory councils," which would prevent predatory types of investment; and by protecting against confiscation and repudiation those foreign investments which, according to objective scrutiny, are not predatory but conform to the new code.

Questions like those raised in the last paragraphs admittedly lead beyond the realm of economic analysis, into what Marshall called economic biology. Economic science, unfortunately, has done so little in the latter field that Professor Staley could not draw on a generally accepted body of opinion, as he could in the field of economic theory. It is not his fault, therefore, that in these respects the book seems deficient. But one may hope that if he proceeds in further work on the problems taken up in his book, he will make substantial contributions of a "biological" nature, in addition to the very valuable presentation which he has already given of the theoretical framework.

HANS NEISSER

BASCH, ANTONIN. *The Danube Basin and the German Economic Sphere*. New York: Columbia University Press. 1943. xviii+275 pp. \$3.50.

In 1925 Leon Pasvolsky published a remarkable study criticizing the economic nationalism of the Danubian countries. Until 1929 those countries continued to believe that their economic development was proceeding satisfactorily, but then the world crisis made it evident that the political and economic problems of that part of Europe were still unsolved and were opening the door to the penetration of the Danube basin by Germany. Now Professor Basch publishes the history of the economic development of the Danubian countries between the two wars. He played an important role in the economic policy of Czechoslovakia, and observed the events in the neighboring countries as a well trained economist and capable businessman. He is aware, on the whole, of the risk of partiality inherent in the presentation of events in which the writer has actively participated. Basch's judgment is almost always well balanced, and he has produced a very instructive basic work on the economic problems of southeastern Europe.

He shows that the successor states of the Austro-Hungarian empire made no attempts to maintain their old economic relations and indulged, instead, in increasing protectionism. "Even Czechoslovakia favored a policy of protectionism which was not fully in accord with her strong industrial position and the great importance of foreign markets to her industry." This criticism is even too mild in view of the fact that in 1924 Czechoslovakia sold nearly 40 percent of her exports to the Danubian countries while only 19 percent of her imports came from them; therefore it was obviously a big mistake to hamper these imports. On the other hand, since Czechoslovakia, and Austria too, had overexpanded their agricultural production, and at very high cost, they "could not substantially increase their imports of agricultural products." At the same time Germany and Italy, who were trying to become self-sufficient, reduced their imports of wheat, for example, from 5 million tons to less than 0.5 million. Thus the situation of the agricultural countries of eastern Europe became desperate. But the industrial population of Czechoslovakia and Austria, whose employment depended on the export of manufactured commodities, also suffered seriously; more than 40 percent of the industrial workers were unemployed.

Dr. Basch expertly analyzes the ensuing financial, monetary and economic crisis and the efforts of the Danubian countries to combat it through control of exchange and of foreign trade. The chapters deal-



ing with these controls, and their influence on price levels, on rates of exchange and on trade, belong among the best in the book, and are the more interesting as many economists believe that such controls will have to be used again after this war, at least for a period of some years. Dr. Basch reaches the conclusion that exchange control "represents one of the crudest forms of import control, usually completely arbitrary." In an excellent analysis he describes the progressive disintegration of the Danubian basin, whose small countries tried to become more and more self-sufficient and became only divided and disillusioned. Some attempts at closer cooperation were made, but had little success. And meanwhile Germany had begun to develop her influence, unchallenged by the western powers, who were ready to allocate central and southeastern Europe to the German sphere of influence. Dr. Basch clearly describes the techniques of Nazi Germany's growing pressure, which ended in the occupation of Austria and Czechoslovakia and in another world war.

His postwar program rightly stresses the importance of avoiding expansion of agricultural production, at extremely high cost, in Europe's industrial countries. But he doubts that the agricultural countries of eastern Europe will be able to compete with overseas production; therefore he regards some kind of preferential treatment as necessary "for a short period," until adjustment to more intensive and more diversified methods is achieved. Yet Dr. Basch admits that "change in the peasant's attitude and in his inherited way of life" is "not an easy step." He believes that the overpopulated Danubian countries will be able to develop industries more efficiently if they can find foreign technical assistance and foreign capital. With good reason he is skeptical about bureaucratic management of the economic reorientation, and about the possibility of a Danubian customs union or federation; he thinks it would be wise to begin cooperation on a more modest scale. In the Danube basin, he remarks, much depends "upon whether the Western or Russian influence is stronger, and as yet there is no possibility of guessing which will be." But since Dr. Basch wrote his excellent book it has become possible at least to guess.

RICHARD SCHÜLLER

LIASHCHENKO, PETR. *Istoriia narodnogo khoziaistva SSSR* (Economic history of the USSR). Vol. 1. Moscow: Economic Institute of the Academy of Sciences of the USSR. 1939. 675 pp.+21 maps.

Russian literature on economic history includes many important special monographs but relatively few attempts to show the develop-

ment of the whole Russian economy through the centuries. Among these few, the work of Liashchenko takes a distinct place. Other authors have been interested primarily in the development of industry and commerce, and have given a subordinate place to the development of agriculture—an unfortunate trend in regard to a country where agriculture has always occupied so predominant a position. Liashchenko, from the beginning of his scientific career, devoted himself primarily to agricultural economy. His first major work, an early forerunner of the present book, was entitled "Essays on Russian agricultural development" (1908). He later revised it three times (last edition in 1925), and it became the basis of his "Russian economic history," published in 1927. The present volume is actually a third edition of the latter work, so completely revised and enlarged that the author allows it to appear as a new book, without mentioning its connection with his previous works. Volume 1, the only one to reach us thus far, treats the economic development of Russia from ancient times until 1917; Volume 2 was to appear in 1941. Both are intended as textbooks for colleges.

The strength of Liashchenko is not in theoretical analysis and system, but in the collection of facts and in descriptive history. His best early works—and Liashchenko is a prolific writer—are those about the Russian grain trade (1912 and 1915) and the regulation of land distribution (2 vols., 1913-17). In his historical conception he is not creative, in the present book even less than before. He has collected scattered remarks of Lenin and Stalin on Russian economic history, and he quotes them as gospel. The attempt to see Russian economic history as a whole against the framework of those quotations, and to adapt it to the historical scheme formulated in the official "Textbook of the history of the Communist party of the USSR" (1938), is a novelty in this book and was probably one of the reasons for presenting it as a new work. But fortunately—and largely because of Liashchenko's weakness in theoretical constructions—his adaptation of the work to the given scheme is of less harm than might be expected. The quotations appear merely as intrusive remarks, without an organic connection with the text. The resultant picture is somewhat disconcerting, but readers accustomed to modern Russian scientific literature will not be too much disturbed.

Liashchenko's newest work differs from its previous editions in still another way, and this doubtless constitutes an improvement. This time he has tried to write an economic history not of Russia proper but of the peoples which through the centuries have merged into the

great Russian nation. American readers know this trend in recent Russian historical science from the excellent works of George Vernadsky. In the field of Russian economic history the task is perhaps even more difficult than in general history. In regard to many parts of what was later to become Russia, research into early economic history is only in its beginnings. Thus the corresponding chapters in Liashchenko's book show a fragmentary and largely hypothetical picture. But even in this form they widen the horizon of the reader and help him to understand better the complicated dynamics of Russian history.

The exposition is of uneven quality. The best chapters are those on the development of agriculture; incidentally, some of Liashchenko's statements on Russian agriculture in ancient times—in Kiev and even in pre-Kiev Russia—are new and of much interest. The long development through the centuries is shown with great knowledge, though the last chapters, those on the development from the beginning of the twentieth century, are of less value. The chapters on the development of industry and commerce are also very important, but those on transportation, finance and economic policy are much less complete; here the gaps are sometimes striking. The colonization or settlement of Russia is almost completely overlooked as an economic phenomenon; the theme of settlement is replaced by that of the colonial expansion of the Russian empire. Despite this unevenness, however, a reader who is prepared for critical study and capable of independent thinking will find the book of great value for the rich information it supplies.

SOLOMON M. SCHWARZ

*New York City*

CHAMBERLAIN, JOSEPH P.; DOWLING, NOEL T.; and HAYS, PAUL R. *The Judicial Function in Federal Administrative Agencies*. New York: Commonwealth Fund. 1942. xii+234 pp., index 10 pp. \$3.

In administrative law, more than in any other branch of law, there is an unfortunate lack of simple and adequate information. New law-making processes are daily being evolved in the work of the administrative agencies, continuously outgrowing the comparatively narrow channels through which the public might be apprised of them. In the words of the final report of the Committee on Administrative Procedure appointed by the Attorney General (1941, p. 25), laymen and lawyers alike "are baffled by a lack of published information to which they can turn when confronted with an administrative problem." The

present volume goes far toward remedying this insufficiency. It presents a remarkable amount of invaluable information concerning the federal administrative agencies, and does so with a lucidity that might deceive an unwary reader into thinking that the writers faced an easy task. Material like this is very far from simple, however, and it is only with great difficulty and painstaking analysis that such clarity can be attained.

The first chapter deals with the methods followed by the federal agencies. After a classification of the types of cases in which judicial procedure is employed, the informal methods of adjudication are briefly sketched—too briefly, perhaps; for an ampler knowledge of these cases, which constitute the bulk of the adjudicative work of the agencies, would be extremely enlightening. The writers then go on to examine formal procedure, and carefully trace its various steps from the initiation of the complaint to the hearing before the agency. They do not neglect to include their own views as to how procedural questions should be handled, and here too one regrets the necessity for brevity; some topics are merely touched upon, with no explanation as to how the conclusions are reached. It would be interesting to know, for example, why the question of possible uniform regulation of procedure is dismissed summarily (p. 15) with the statement that "In view of the diversities in the different agencies and the advantage of protecting the flexibility of their procedure, it is wise to allow each agency to establish its own rule, subject to the control of the court to protect the essentials of due process, rather than to set up these rules in a general statute subject only to amendment by Congress." So cursory a dismissal precludes any consideration of proposals such as the bill on federal administrative procedure drafted by the Attorney General's committee.

The second chapter, which is devoted to problems of policy, is primarily concerned with the role played by administrative discretion. From a purely legalistic point of view it might be wished that more attention had been given to the effect produced on substantive law by the regulations and opinions reviewed in this chapter—an effect which, as the result of policy, is as important as the exercise of discretion in determining policy. But for a description of the judicial function of administrative agencies, which is the purpose of the book, the exercise of discretion is perhaps the most important aspect of the problem.

It is obviously in the enforcement of their decisions, treated in Chapter III, that administrative agencies reveal their main strength

and their main weakness—their status as new hybrids among those other creatures, already classified, that inhabit the legal world. How coercive is their action? What form does compulsion take? The authors' information and discussion on these points is of the utmost value, for it is here that the fog is thickest in the minds of both public and attorneys. And of equal significance is the next step, discussed with a wealth of material in the subsequent chapter: the methods of access to the courts.

Certain general problems regarding the judicial functions of the federal agencies are informatively dealt with in the conclusions, including the difficult question of the judge-prosecutor combination, and the possible remedies. No mention is made, however, of one of the biggest problems in administrative law: whether a clear distinction should be made between rights that would be protected only through administrative remedies and those that would be asserted only in courts, a distinction, in short, between administrative and legal remedies, and thus between administrative tribunals and courts. Such a distinction, which is mentioned in this book only in connection with proposed benefit rights (p. 8), would entail a radical change in the whole judiciary, a change that would necessarily be opposed to the traditional common law development as applied to administrative law; for that development means, on the one hand, the maintenance of only one type of judiciary, and, on the other, continuous adjustments in administration, with no sudden breaks with the past. The authors indicate quite unmistakably, however, that they do not wish to venture into the hazards of abstractions concerning what the administrative set-up should be.

RENZO RAVA

*New York City*

ROSINSKI, HERBERT. *The German Army*. Washington: The Infantry Journal. 1944. viii+220 pp. \$3.

This is much more than a new edition of the study of the German army which Dr. Rosinski published in 1939. Recast almost entirely, in the light of recent events and with the aid of materials lately made available, it must be regarded as a new and authoritative study of the German military system, and as such it merits the careful attention of both the scholars and the soldiers of our time.

The book is divided into two sections. In the first the author traces the development of the German army from the eighteenth century to Hitler's assumption of full military control in 1938. In this survey

Dr. Rosinski has succeeded admirably in placing the military record in the framework of general history, and in showing the interrelationship between military and political developments in modern Germany. Notable for its brilliant sketches of Frederick, Scharnhorst, the elder Moltke, Falkenhayn and Ludendorff, this section includes also a new appraisal of the Reichswehr's political role under the Weimar republic, and the first thorough analysis in English of the military reforms of General Seeckt. The latter half of the volume is devoted to special studies of coordination and command, the general staff system, the current ideas of the German army and the strategy of the present war.

The modern German army has been distinguished by its willingness to experiment and its ability to learn from defeat. This was notably true in the first great age of military reform, when the Prussian army, in the hands of Scharnhorst, Gneisenau and Clausewitz, effectively surmounted the disaster of Jena and, within six years, helped to defeat its conqueror. It has been true again in our own day, and the army that was demoralized and broken in 1918 came very close to complete victory in 1940.

This remarkable recovery was made possible by a number of factors. Seeckt's successful struggle to maintain the general staff system in the post-Versailles period must be ranked as one of the most significant. Equally important were the social reforms effected in the years following the defeat. One of the major sources of weakness in the old imperial army was the almost impassable gulf that existed between the officers corps and the enlisted men, a gulf that weakened the cohesion of the army and, in the last stages of the war, helped to destroy its spirit. After he had assumed military control Seeckt applied himself to this problem and, without relaxing the discipline of the army, he placed great emphasis upon the comradely relationship that should exist between officers and rank and file. The Nazi war chiefs have carried this idea further, with conspicuous success. Another source of internal dislocation in the old imperial army was removed when the *Oberkommando der Wehrmacht* was established in 1938. The institution of the OKW has enabled Hitler to coordinate the military and political strategy of the state to a degree unknown in the past and, at the same time, to remove that friction between the various branches of the service which was such a burden to Falkenhayn and Ludendorff in the last war.

Careful attention to training on all levels, removal of social frictions and steady improvement of coordinating machinery have all con-



tributed to the successes won by German armies in the present war. Dr. Rosinski makes it clear, however, that the very nature of the post-war reconstruction of the German army has caused internal inconsistencies which have been a source of trouble. The tremendous expansion of the German army after 1935 destroyed that homogeneity of the officer corps which had been the cornerstone of the German military system since the days of Frederick the Great. It is not unlikely that the failure of the Russian campaigns was strongly influenced by the confusion caused by that change.

Moreover, while the new army under Hitler's leadership has striven to adapt itself to the techniques of industrial mass warfare, it has not been able to make that adaptation complete. As Dr. Rosinski says, "The new German Army, starting from a most vigorous pre-industrial tradition, just re-affirmed and immensely consolidated by Seeckt, succeeded neither in achieving a real synthesis between that tradition and its new technical spirit, nor in casting it aside altogether. The result has been that in every sphere: in its ideology, its social structure, its strategic ideas, its attitude towards its theoretical heritage, we find these two widely divergent elements of its makeup reconciled in a superficial and uneasy synthesis." The contrast between the German and Russian armies is notable in this respect, for the Red Army, "starting from scratch, went all the way and based itself squarely and exclusively upon the new concept of industrial mass warfare."

Perhaps the most remarkable sections of this book are those devoted to strategy. A lifelong study of German strategy has convinced the author that German military thought today is characterized by "a practically complete absence of the deep philosophical background out of which it was originally constituted by Scharnhorst and his circle; and by a consequent reduction from the radical and comprehensive theory of war developed by Clausewitz to a narrow theory of mere virtuosity in the conduct of operations." The glorification of the *Angriffsgeist* as a national virtue, and the consequent aversion to defensive war on the part of German military theorists and the German public, is an important illustration of this misreading of the past. Under Schlieffen and his successors, overemphasis upon offensive warfare left the officer corps ill prepared for the conditions of trench warfare imposed upon them in the last war, and contributed directly to the final collapse. In the years preceding the present war, the ascendancy of the offensive school was again almost complete, with the result that both the military leaders and the general public have found it difficult to reconcile themselves to the necessary shift to the

defense. It is too early to tell what effect this unwise neglect of Clausewitz' specific warnings as to the importance of the defensive has had upon army and civilian morale. It cannot, however, have been insignificant.

Finally, as Dr. Rosinski points out, the present leaders of the German army have narrowed their vision to such an extent that they are preoccupied no longer with war as an organic whole, as were the theorists of the early nineteenth century, but merely with the *conduct* of war. In the face of the steadily increasing complexity of modern warfare, they have not striven after the philosophic breadth of Scharnhorst and Clausewitz, but have rather sought to gain the elasticity of action which the early masters grasped by "the mechanization of all staff and command techniques capable of standardization." This, in turn, has rendered the modern German military system vulnerable to unexpected obstacles and hitches, while at the same time, by freezing fighting techniques, it has made adaptation to entirely new fighting conditions extremely difficult. Thus, in the present war, the German army, for all its machine-like precision when the going is good, has faltered whenever it was confronted with a situation requiring a radical reconsideration of basic ideas; and this limitation of approach may quite possibly prove in the end to be the major cause of its final defeat.

GORDON A. CRAIG

*Princeton University*

FARBER, MARVIN. *The Foundation of Phenomenology. Edmund Husserl and the Quest for a Rigorous Science of Philosophy*. Cambridge: Harvard University Press. 1943. xi+585 pp. \$6.

The founding of phenomenology by Edmund Husserl is one of the important events in the history of philosophy during the last generation. In the opinion of Husserl's followers it is the most important event. At the end of the last century, when psychologism prevailed in logic, his attempt to redefine the field of logic and epistemology proper, and to develop a rigorous scientific method for its investigation, inevitably met with resistance and misunderstandings, but it also found enthusiastic disciples. Husserl became the head of a school of phenomenological philosophy, and after 1913 the *Jahrbuch für Philosophie und Phänomenologische Forschung*, opening with Husserl's "Ideas," was the organ of the movement. After Husserl's death the movement found institutional expression in the International Phenomenological Society, and its new organ in the quarterly journal,

*Philosophy and Phenomenological Research*, edited by Professor Marvin Farber. The society has a program of publication: besides its quarterly it has published a volume of *Philosophical Essays in Memory of Edmund Husserl*; the present volume by Professor Farber is the third in the series of planned publications.

The setting of Professor Farber's book has to be taken into account in appraising it. It is not simply a presentation or critique of Husserl's philosophical position, though it has the definite purpose of making the American public better acquainted with Husserl's intentions. It attempts to interpret Husserl's work in such a way as to isolate "descriptive phenomenology" as the method that can find general acceptance, while eliminating the elements of transcendental idealism which connect Husserl's work with the German philosophical tradition. Thus, beyond its achievement as a work of science, the book represents a pragmatic effort to introduce the method of phenomenology to this country in an acceptable form.

This practical purpose determines not only the content but also the proportions of Professor Farber's book. The greater part of it (Chapters 4-5 and 8-14) contains a detailed presentation of Husserl's first main work, the "Logical Investigations," and the free rendering of this work is intended to substitute for a translation (the second main work, the "Ideas," is accessible in an English translation by W. R. Boyce Gibson). This part of the book is preceded by chapters on Husserl's early development, on his "Philosophy of Arithmetic" and on his early logical writings; it is followed by analyses of his later contributions to a science of logic (Chapter 15), of the "Lectures on the Consciousness of Inner Time," the "Ideas" and the "Cartesian Meditations" (Chapter 16) and of the final position of Husserl (Chapter 17), as it was presented with the philosopher's approval by Eugen Fink in his essay on "Die phänomenologische Philosophie Edmund Husserls in der gegenwärtigen Kritik" (in *Kantstudien*, 1933, pp. 319-83). The only part of Husserl's work that is not presented adequately is the essay on "The Crisis of European Sciences and Philosophy" (published in *Philosophia*, vol. 1, 1936), although this essay throws a revealing light on Husserl's own view of the historical place of his work. In his preface, however, the author promises a future publication that will contain a more detailed discussion of Husserl's later phase.

As a consequence of its composite character, Professor Farber's book holds a double interest for the reader. If he is not yet acquainted with Husserl's work, the account of the "Logical Investigations" will be of

primary importance to him as an introduction to the phenomenological method in operation. The author's rendering of Husserl's treatise is lucid, and frequently easier to understand than the original work; wherever the present reviewer checked a particular point, Professor Farber's presentation proved accurate. The difficulties of the German terminology are overcome with great skill and with a fine sense for the possibilities of the English language. In the economy of the book, the ample space devoted to this presentation is justified, because the author regards the results of this earlier work—with its analyses of expression and meaning, of pure grammar, of intentional experiences—as the most valuable concrete contribution made by "descriptive phenomenology."

The reader who is already acquainted with Husserl's work will take more interest in Professor Farber's interpretation and critique of the later phase, and also in his attempt to isolate that achievement of phenomenology which in his opinion is fit to become a permanent part of philosophy as a rigorous science. The author accepts phenomenology only as a technique for a presuppositionless procedure in philosophy. The "Cartesian reduction" results in the suspension of all positings of an existence which transcends the mind, and reveals the field of the "transcendental ego," with its aprioristic structures in which experience of the world is constituted. The elimination of "assumptions," and the development of a method that can penetrate in non-dogmatic reflection to the ultimate constituting subjectivity of the ego, are seen as the specific contribution of phenomenology to philosophical method. In this respect Husserl's work "is really a generalization of the deductive method of defining assumptions"; it is an addition to the methods used in philosophy, aiding "in assuring universal reflection and objective knowledge." The most important result thus far achieved by the method is the new epistemological foundation of logic.

The present reviewer finds himself in complete agreement with Professor Farber's opinions in this matter. But it should be understood—and it is understood, of course, by the author—that this opinion deviates considerably from Husserl's own view of his philosophical enterprise. Husserl regarded his work not as a "contribution" to the methods of philosophy, improving and enlarging them, but as a radically new foundation, which, though fulfilling intentions of earlier thinkers, particularly of Descartes and Kant, established philosophy anew on a firm, "apodictic" foundation. To him the history of philosophy since antiquity was only a preparatory phase, while in his own

person and work philosophy reached its ultimate stage as a science; his appearance marked the moment from which the new era of scientific philosophy would be counted.

For the student of intellectual history it is a fascinating spectacle to see how Professor Farber purges Husserl of his messianism and makes him a good, democratic, cooperative contributor. With regard to the arguments used in this process, however, the reviewer disagrees with the author. It is entirely legitimate to isolate the "reductions" and the method of description as the permanently valuable core of Husserl's work; and the criticism of Husserl's inclinations to hypostatize the transcendental ego and the transcendental intersubjectivity into metaphysical entities is certainly well founded. But Husserl is to be criticized not for his metaphysical leanings in general but because his metaphysics is technically bad. While the reflective method is essentially undogmatic and cannot lead to a metaphysical position, it certainly is compatible with one—and perhaps with more than one. It should not be forgotten that the "reduction" in the "Meditations" of Descartes, which served as the model for Husserl's, is set in the framework of a traditional Christian meditation, and that the Christian meditation, with all its metaphysical implications, is the root out of which the philosophical methods of reduction and reflection grow.

Professor Farber is not interested in these relations. His occasional juxtaposition of "mysticism" with "obscurantism" indicates that the problems of mystical philosophy do not appeal to his secularist temper. The idealistic inclinations of Husserl, however unsatisfactory in their expression, are the last trace of the metaphysical unrest which made possible the Cartesian method of reduction. It may be that this unrest, which reveals itself openly in the later Husserl, was even in the earlier phase the hidden source of productivity providing the drive of the phenomenological achievement; and it may be feared that with the round condemnation of this unrest the source of further achievement will dry up.

But this slight disagreement with the author should by no means impair the full recognition of Professor Farber's work as a masterly and skilful presentation of Husserl's philosophy. The volume should contribute materially to a fuller and wider understanding of the phenomenological method, and provoke its application in fruitful investigations.

ERIC VOEGELIN

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BERNARD, L. L., and BERNARD, JESSIE. *Origins of American Sociology*. New York: Thomas Y. Crowell. 1943. xv+848 pp., indexes 18 pp. \$6.50.

For over a decade Professor L. L. Bernard and Dr. Jessie Bernard have been investigating the background of American sociology, and have from time to time published various articles on selected aspects of the subject. Now they have assembled some of their findings in this large and rewarding volume on the Social Science Movement, the most direct and immediate predecessor of the academic discipline of sociology in the late 1880's and subsequent decades. The authors trace the evolution of this movement, from its rise as the American analogue in social philosophy of French positivism and neo-positivism, through the establishment of the American Social Science Association, culminating in the crystallization in the last third of the nineteenth century of applied sociology and social work, the chief immediate antecedents of sociology in the United States.

The Social Science Movement, which was an amalgam of two eighteenth century ideals—social reform and science—was not a generic term for all the social sciences; rather it served as the religion of a society in the throes of industrialization, at least of its educated, urbanized, Protestant protagonists. It was an ideological movement for social betterment which grew up alongside the special social sciences and for a while seemed to overthrow them, employing their findings for its schemes of analysis and reform. The idealistic intellectual legacy of the Enlightenment, it was most fully developed in France, England and the United States, but also found adherents in almost all civilized countries of the world. Everywhere it underwent practically the same fate and declined at about the same time, because its success, its fields of interest, amount of knowledge and specialization, grew to such an extent that decentralization became imperative. Thereafter the Social Science Movement was merged in the specific social sciences and techniques. Since then only sociology has retained, and that only in a limited degree, an interest in the whole field and a concern about social welfare as a whole. Recent decades, however, have seen a return to a more integral view.

In the United States the Social Science Movement passed through several phases. The earliest, the Associationist Movement, led by A. Brisbane, W. H. Channing and others, was a direct transplantation from European humanitarianism and utopianism, with their metaphysical speculation and quest for general leading theoretical principles. This phase came into disfavor in the 1840's and was succeeded



by a positivistic trend at about the middle of the century, based on Comtean and Spencerian foundations, culminating in attempts to found a systematic school of sociology in line with the major goals of the movement. The abstract methodological orientation proving too much for the majority of the followers, there was a minor revival of radical Associationism, mixed with positivism, up to the close of the sixth decade of the century. It was then that trained political economists became interested in the movement and began to supplant the abstract social philosophy trend by an orientation to social welfare, based on nationalist and neoclassical economic theory. In 1865 these economists and other persons of comparable interests established the American Social Science Association, which continued in existence for nearly fifty years. In this period the effort to establish realistic working principles of social welfare and reform, largely philanthropic and economic in character, issued in the establishment of a national organization and local groups for discussion and promotion of these reforms.

After 1865 social science shed most of the old sentimental and metaphysical content and began to be an academic discipline in college and university, to beget textbooks, and to develop a succession of methodologies in three stages—speculative, historical, and statistical. The result of this systematization was the development of dependable systematic procedures, the redistribution of tasks in the various social sciences, especially to the new discipline of sociology.

There was a significant change in the ideology of this movement as American economy developed into an economy of business, a change reflected in an increasing aversion from reformist interest and, conversely, in an increasing justification of economic exploitation. The result was that the economic Social Scientists split into two groups, with both gradually withdrawing from active participation in the official Social Science Movement. The more conservative elements and the more systematic economic representatives formed the American Economic Association; whereas the more radical joined with the rising socialist movement, disdaining not only the Social Science Movement and the Association, which ceased to exist soon after the turn of the century, but also its successor, sociology. It was the Social Science Movement, however, which led to the development of such important organizations as the American Prison Association, the National Conference of Social Work, the American Historical Association, the American Economic Association, the American Political Science Association, the American Sociological Society.

The reformist ideal, stripped of its utopian vagaries and hitched to concrete problems of charity, dependency and delinquency, became social work, criminology and the like. On the other hand, the scientific trend increasingly sloughed off responsibility for social amelioration and strove for complete scientific detachment. Indeed, the social sciences, to the degree to which they sought to become scientific, lost their orientation to reality and increasingly strove for abstractions. Only sociology maintained some responsibility for the totality of the social problem. As for the others, it was not until the great depression that they recaptured any feeling for the interrelatedness of the major institutions of society. In recent years a strong trend has become apparent toward a return to the unified approach characteristic of the old Social Science Movement.

Since the authors consciously restrict themselves to those precursors of American sociology derived from the Social Science Movement, certain relevant factors do not come in for consideration, for example, the influences of transcendentalism, Unitarian social philosophy, and the growth of literary realism. More attention might possibly have been paid to the social thinking of the American Hegelians of an earlier generation, and to the beginnings of pragmatist thought. Within the limits of the author's task more consideration might have been given to the contribution of Henry George, Lester F. Ward and the early Veblenian works; and the various intellectual influences from the socialist tradition do not receive the attention they certainly merit.

But this ample and well documented volume, the fruit of long and laborious investigation, will be warmly welcomed by all students of the history of American sociology for the light it sheds on that discipline's European background and early theoretical orientation. It is to be hoped that the authors will continue their valuable research into the history of American sociology in its subsequent phases.

EPHRAIM FISCHOFF

*Lecturer, Graduate Faculty*

BURCKHARDT, JACOB. *Force and Freedom: Reflections on History*. [Edited, with an introduction, by J. H. Nichols.] New York: Pantheon. 1943. vi+382 pp. \$3.50.

The translation and publication of this book is most timely, as Burckhardt's study reveals a great deal about the forces and tendencies that led to the wars of our time. Burckhardt saw the coming catastrophes because he knew history and the character of man. This

book is in the nature of a summary of the perceptions he derived from his studies on ancient, mediaeval and modern societies.

Burckhardt assumed three forces as constituting the human coefficients of the historical process: power, religion and reason. Reason is the sphere of freedom and creative independence, the dynamic element in the social process. Power and religion, concentrated on a static order, attempt to establish institutions that endure. In a final analysis, however, the social process is dynamic, because of the lasting antagonisms between the hardening institutions of the political and religious powers and the never-ending creativity of the human mind. Over and over again human inventiveness and the quest for meaning produce new situations, which lead ultimately to historical crises and new alignments of the basic elements in the social process. Similarly in his analysis of the "great man" and his function in history Burckhardt revealed his freedom from historical romanticism. He emphasized that we mean different things when we use the term for intellectual or artistic achievement from what we mean when we use it for the

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Conrad Taeuber, Managing Editor  
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political hero. Burckhardt's effort to elaborate a typology of "greatness" has become a basic guide for all subsequent investigations into this problem. In this connection he distinguished between the men who are recognized because of success, those who are revered because of their virtues, and the terrible simplifiers who are acclaimed as saviors in revolutionary situations.

J. H. Nichols has provided this book with an excellent introduction. Particularly illuminating are the analogies he has drawn between Burckhardt and various American thinkers, especially Henry Adams and the American humanists.

ALBERT SALOMON

NEF, JOHN ULRIC. *The Universities Look for Unity: An Essay on the Responsibilities of the Mind to Civilization in War and Peace*. New York: Pantheon. 1943. 42 pp. 50 cents.

An eminent specialist in the history of early capitalism has entered the general field of educational problems, and taken sides in the

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- AYRES, C. E. *The Theory of Economic Progress*. Chapel Hill: University of North Carolina Press. 1944. ix & 317 pp. \$3.
- BERGSON, ABRAM. *The Structure of Soviet Wages. A Study in Socialist Economics*. Cambridge: Harvard University Press. 1944. xvi & 255 pp. \$3.50.
- BIENSTOCK, GREGORY; SCHWARZ, SOLOMON M.; YUGOW, AARON. *Management in Russian Industry and Agriculture*. New York: Oxford University Press. 1944. xxxii & 198 pp. \$3.
- BRAUN, KURT. *The Settlement of Industrial Disputes*. Philadelphia: Blakiston. 1944. xii & 306 pp. \$3.50.
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- ROSINSKI, HERBERT. *The German Army.* Washington: The Infantry Journal. 1944. viii & 220 pp. \$3.
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- SYMONOLEWICZ, KONSTANTY. *The Studies in Nationality and Nationalism in Poland between the Two Wars (1919-1939). A Bibliographical Survey.* New York: Polish Institute of Arts and Sciences in America. 1944. 73 pp.

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